APPENDIX

In The
Supreme Court of the United States
October Term, 1978

No. 78-1651

Seatrain Shipbuilding Corporation, *et al.*,
Petitioners,
v.
Shell Oil Company, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 30, 1979
CERTIORARI GRANTED JUNE 18, 1979

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

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SEATRAIN SHIPBUILDING CORPORATION, *et al.*,
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v.

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TABLE OF CONTENTS *

* The opinion and dissent issued by the court of appeals on February 6, 1979 are reproduced in Appendix A of the Petition at pages 1a-61a. The opinion issued by the district court on November 22, 1977 is reproduced in Appendix A of the Petition at pages 65a-95a.

TABLE OF CONTENTS—Continued

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-1645

SHELL OIL COMPANY,

Plaintiff,

v.

JUANITA M. KREPS

(Individually and as Secretary of the United States Department of Commerce acting in her official capacity),

ROBERT J. BLACKWELL

(Individually, as Assistant Secretary of Commerce for Maritime Affairs and as Chairman of the Maritime Subsidy Board acting in his official capacity),

HOWARD F. CASEY

(Individually, as Deputy Assistant Secretary of Commerce and as Member, Maritime Subsidy Board acting in his official capacity),

SAMUEL B. NEMIROW

(Individually, as General Counsel, Maritime Administration and as Member Maritime Subsidy Board, acting in his official capacity),

Defendants,

SEATRAIN SHIPBUILDING CORPORATION,
POLK TANKER CORPORATION,

Intervenor-Defendants.

Civil Action No. 77-1647

ALASKA BULK CARRIERS, INC.,
TRINIDAD CORPORATION,
Plaintiffs,

v.

JUANITA M. KREPS,

Secretary of Commerce, U.S. Department of Commerce,

MARITIME ADMINISTRATION,

U.S. Department of Commerce,

MARITIME SUBSIDY BOARD,

U.S. Department of Commerce,

ROBERT J. BLACKWELL,

Individually and as Assistant Secretary of Commerce for Maritime Affairs, Maritime Administrator and Chairman, Maritime Subsidy Board, Maritime Administration, U.S. Department of Commerce.
Defendants,

SEATRAIN SHIPBUILDING CORPORATION,
POLK TANKER CORPORATION,
Intervenor-Defendants.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

September 22, 1977—Verified complaint, motion for temporary restraining order, and motion for preliminary injunction filed by plaintiff in C.A. 77-1645.

September 22, 1977—Complaint, motion for temporary restraining order, motion for preliminary injunction, affidavits of Larry L. Liddle and John J. Ervin filed by plaintiffs in C.A. 77-1647.

September 22, 1977—Oral motion of Seatrain Shipbuilding Corporation and Polk Tanker Corporation to intervene as party defendants granted.

September 22, 1977—Hearing held and order granting motions for temporary restraining order issued.

September 26, 1977—Order filed granting motion to intervene.

September 28, 1977—Motion to dissolve temporary restraining order and to dismiss, and affidavits of James Carthaus, Robert M. Macy, Jr., and Robert Brown filed by intervenor-defendants.

September 29, 1977—Motion to dissolve temporary restraining order and to dismiss, and affidavits of James S. Dawson, Jr. and Russell F. Stryker, filed by federal defendants.

September 29, 1977—Affidavit of Dennis Burgess filed.

September 29, 1977—Hearing memorandum filed by plaintiffs in C.A. 77-1647.

September 29, 1977—Plaintiffs' motion for preliminary injunction heard and taken under advisement.

September 29, 1977—Proposed findings of fact and conclusions of law filed by intervenor-defendants.

September 30, 1977—Order entered consolidating C.A. 77-1645 and C.A. 77-1647.

September 30, 1977—Findings of Fact and Conclusions of Law, and Order dissolving temporary restraining order, denying plaintiffs' motions for preliminary injunction, and denying without prejudice intervenor-defendants' motion to dismiss entered.

October 12, 1977—Motion for summary judgment and in opposition to motion to dismiss, statement of material facts, and affidavit of William Karas, filed by plaintiffs in C.A. 77-1647.

October 13, 1977—Motion for summary judgment and in opposition to motion to dismiss filed by plaintiff in C.A. 77-1645.

October 13, 1977—Status Call.

October 18, 1977—Memorandum in opposition to plaintiffs' motions and in support of motion to dismiss, and statement of material facts, filed by intervenor-defendants.

October 18, 1977—Memorandum in opposition to plaintiffs' motion for summary judgment and in support of motion to dismiss, and affidavits of Russell F. Stryker and Edmond J. Fitzgerald filed by federal defendants.

October 18, 1977—Amendment to complaint filed by plaintiff in C.A. 77-1645.

October 20, 1977—Stipulation of Undisputed Facts filed.

October 20, 1977—Statement of Issues and Response filed by federal defendants and intervenor-defendants.

October 20, 1977—Amendment to complaint filed by plaintiffs in C.A. 77-1647.

October 21, 1977—Response to statement of issues filed by plaintiffs in C.A. 77-1647.

October 24, 1977—Cross motions for summary judgment heard and taken under advisement.

October 28, 1977—Administrative record filed.

November 22, 1977—Memorandum Opinion and Order declaring certain action by Secretary of Commerce to be arbitrary and capricious and an abuse of discretion in violation of 5 U.S.C. 706(2)(A); granting plaintiffs motions for summary judgment in part; denying defendants' and intervenor-defendants' motion for summary judgment in part; remanding case to the Secretary for reconsideration in accordance with the memorandum opinion within 45 days; setting status call for 11-30-77, 9:30 a.m.

November 29, 1977—Motion for amendment of order and other relief filed by plaintiffs in C.A. 77-1647.

November 30, 1977—Status call and hearing on motion to amend order. Order filed granting plaintiffs' motion to amend order and dismissing remaining claim of plaintiffs.

December 2, 1977—Notice of appeal filed by plaintiffs in C.A. 77-1647.

December 29, 1977—Notice of appeal filed by plaintiff in C.A. 77-1645.

January 30, 1978—Notices of appeal filed by intervenor-defendants in both cases.

October 16, 1978—Argument before court of appeals.

February 6, 1979—Opinion and judgment of the Court, and dissenting opinion of Judge Bazelon, filed.

March 22, 1979—Orders entered denying petitions for rehearing and suggestions for rehearing en banc.

April 3, 1979—Order filed by Clerk vacating order of March 22 denying suggestions for rehearing en banc and entering amended order denying suggestions for rehearing en banc.

April 19, 1979—Order filed granting motions for stay of mandate until May 1, 1979.

April 30, 1979—Notification from Clerk, Supreme Court that petition for writ of certiorari was filed on April 30 in S.C. No. 78-1651.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-1645

SHELL OIL COMPANY,
(a Delaware Corporation)
One Shell Plaza
P.O. Box 2463
Houston, Texas 77001
(713) 241-6492

Plaintiff,

v.

JUANITA M. KREPS
(Individually and as Secretary of the United States Department of Commerce acting in her official capacity). United States Department of Commerce, 14th and E Streets, N.W., Washington, D.C. 20230,

and,

ROBERT J. BLACKWELL,
(Individually, as Assistant Secretary of Commerce for Maritime Affairs and as Chairman of Maritime Subsidy Board acting in his official capacity). United States Department of Commerce, 14th and E Strets, N.W., Washington, D.C. 20230,

and,

HOWARD F. CASEY,
(Individually, as Deputy Assistant Secretary of Commerce and as Member, Maritime Subsidy Board acting in his official capacity). United States Department of Commerce, 14th and E Streets, N.W., Washington, D.C. 20230,

and,

SAMUEL B. NEMIROW,
(Individually, as General Counsel, Maritime Administration and as Member Maritime Subsidy Board, acting in his official capacity). United States Department of Commerce, 14th and E Streets, N.W., Washington, D.C. 20230,

Defendants.

VERIFIED COMPLAINT

(Declaratory and Injunctive Relief)

I. *Jurisdiction and Venue*

1. The court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1346 and 2201.

2. Venue lies in the District of Columbia pursuant to 28 U.S.C. §§ 1391(a) and (e).

II. *The Parties*

3. Plaintiff Shell Oil Company ("Shell") is a Delaware corporation and its operations are primarily within the United States. Approximately 69 percent of Shell's stock is owned by Shell Petroleum, N.V., a Netherlands corporation, of which, in turn, 60 percent is owned by Royal Dutch Petroleum Company, a Netherlands corporation, and 40 percent by Shell Transport and Trading Company, a United Kingdom corporation.

4. Shell is currently the purchaser under a construction contract entered into on February 28, 1975 of two 188,500 deadweight ton San Diego class tankers being constructed by National Steel and Shipbuilding Company, San Diego, California. Both vessels are being built without government subsidies or financing aids. The approximate cost of each vessel is estimated at $92 million.

The first vessel is scheduled for delivery in January, 1978 and the second vessel in September, 1978.

5. The vessels being constructed for Shell are designed specifically for the Alaskan oil trade and meet or exceed the highest world and U.S. safety standards for tank vessels. Each vessel will have full segregated ballest to world (IMCO) standards, double bottoms and advanced cargo handling, safety and navigation features.

6. At delivery, title to each vessel now under construction will be transferred to a separate subsidiary of Bankers Trust Company, since Shell as a non-U.S. citizen corporation under the Shipping Act, 1916, as amended (46 U.S.C. 801, *et seq.*) cannot take title to the vessels. Shell will then time charter each vessel for an initial period of 23 years. The vessels are expected to be operated by Marine Transport Lines, Inc., a major independent U.S. ship operator.

7. The time charters to Shell will be set at such a rate not only to cover operating costs but as to repay Bankers Trust Company the cost of each vessel over the course of the 23 years period. Shell will be required to make these payments whether or not the vessel is operated, such charters being known as "hell or high water" charters.

8. The only commercial possibility for operation of the ships in the Alaskan oil trade is by subcharter to transport Alaskan crude oil owned by Standard Oil Company of Ohio ("SOHIO"), Atlantic Richfield Company ("ARCO"), or Exxon Corporation ("Exxon").

9. On information and belief, the ARCO and Exxon needs for transport of crude oil over the next three to five years can be met by unsubsidized vessels owned, being constructed or currently chartered by ARCO and Exxon themselves. SOHIO has evidenced its willingness

ot charter the STUYVESANT. On information and belief, SOHIO has the need for at least one ship for full time employment over the next three to five years in the Alaska trade, and is the only real potential subcharterer for Shell's vessels in the Alaska trade.

10. There is no commercially viable use for the Shell ships other than in the Alaskan oil trade.

11. Defendant Juanita M. Kreps is Secretary of the United States Department of Commerce. In this capacity, she is responsible for administration of the Merchant Marine Act of 1936, as amended, 46 U.S.C. § 1101 *et seq.* ("Act"), and the regulations promulgated thereunder, 46 C.F.R. Part 200.

12. Defendant Robert J. Blackwell is Assistant Secretary of Commerce for Maritime Affairs and Chairman, Maritime Subsidy Board ("MSB"). In his capacity as Assistant Secretary, the Secretary has delegated to him responsibility for administration of specific duties under the Act, including management of the Federal Ship Financing Program authorized by Title XI of the Act, 46 U.S.C. § 1271 *et seq.* (1976). In his capacity as Chairman, MSB, the Secretary has delegated to him responsibility, in concert with the two remaining members of the Board, for managing the Construction-Differential Subsidy ("CDS") Program authorized by Title V of the Act, 46 U.S.C. § 1151 *et seq.* (1976).

13. Defendant Howard F. Casey is Deputy Assistant Secretary of Commerce and Member, MSB. As an MSB member he participates in the management of the CDS Program.

14. Defendant Samuel B. Nemirow is General Counsel, Maritime Administration and Member, MSB. As an MSB member, he participates in the management of the CDS program.

III. *Cause of Action*

15. Pursuant to Title V of the Act, 46 U.S.C. § 1151 *et seq.*, the Maritime Subsidy Board is empowered to award persons building new vessels for use in the "foreign commerce of the United States" a "construction-differential subsidy." The CDS program permits the United States-flag shipping industry to compete in United States foreign trade by lowering the effective construction costs of United States-flag ships. This permits United States-flag ships to offer in charter rates which are competitive with those charged by foreign-flag vessels, which were built in foreign shipyards at lower costs due to lower wages or material costs or subsidies from their own governments.

16. Section 501 of the Act, 46 U.S.C. § 1151, provides for the payment of CDS for ships to be used in the United States foreign trade. Section 506 of the Act, 46 U.S.C. § 1156, provides that owners of vessels for which CDS has been paid must contract to use the vessel only in U.S. foreign trade or in limited domestic service associated with such foreign trade, or in temporary use in domestic trade for no more than six months in any one year upon a determination that such temporary use is "necessary and appropriate to carry out the purposes" of the Act. Section 506 reads, in relevant part:

> Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade . . . The [Board] may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the [Board] may determine that such transfer is necessary and appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the [Board], upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the [Board] as such temporary period bears to the entire economic life of the vessel.

17. While section 506 would thus allow a CDS vessel to be used in the Alaskan trade for a period of six months, it also protects Shell against competition from CDS vessels in the Alaskan trade for any period longer than six months in any one year.

18. The MSB has promulgated regulations under section 506 further limiting the circumstances under which CDS vessels may be used in the domestic trade for purposes of carrying Alaskan crude oil. 46 C.F.R. Part 250, 42 Fed. Reg. 33035 (June [illegible], 1977). These regulations incorporate the statutory six month limitation on waivers and, in addition, restrict waivers to the use of subsidized vessels in the Alaska-Panama Canal segment of the Alaska to U.S. Gulf Coast trade. The restriction is based on a specific administrative finding that sufficient unsubsidized vessels will be available to handle all other movements of Alaskan oil:

> The Maritime Administration has determined that suitable tank vessels, built without CDS appear to be available to serve the Alaska-West Coast trade and the Panama Canal-Atlantic/Gulf Coast trade.

19. Section 27, Merchant Marine Act, 1920, as amended, 46 U.S.C. § 883 (1976), provides that only vessels constructed in the United States may engage in domestic trade (trade from one point to another in the United States). Thus, no CDS is necessary to compensate for lower construction costs in foreign shipyards and none is provided for by act of Congress.

20. Pursuant to Title XI of the Merchant Marine Act, 42 U.S.C. § 1271 *et seq.*, (1976), the Assistant Secretary is authorized to provide loan guarantees for United States-flag vessels. The shipowner sells bonds which the Government guarantees in case of default. The vessel collaterializes the debt. This program is designed to provide low-cost financing for vessel owners. Section 1274(b)(2) provides that financing under this program shall not exceed 87.5 percent of cost for vessels constructed without CDS and 75.0 percent for CDS vessels.

21. On June 20, 1972, MSB Seatrain Shipbuilding Corp. ("Seatrain"), and Polk Tanker Corporation ("Polk"), executed CDS contracts for a 225,000 deadweight ton tanker to be called the STUYVESANT. Pursuant to Board Contract No. MA/MSB-165, Polk, as the vessel purchaser, agreed to operate the STUYVESANT in U.S. foreign trade, as required by section 506 of the Act. Pursuant to Board Contract No. MA/MSB-164, MSB agreed to pay Seatrain CDS funds. Polk and Seatrain are wholly owned subsidiaries of Seatrain Lines, Inc.

22. On information and belief, between the inception of its CDS contract, and September 23, 1977, Seatrain received some $30,156,529 in CDS payments.

23. The construction cost of the STUYVESANT is approximately $70,180,428.

24. On July 8, 1977, Polk filed with MSB a request that the domestic trade restrictions of section 506 be waived with respect to the STUYVESANT, then nearly ready for delivery, for a period of three years, provided a pro rata portion of CDS was repaid. The request stated that if a waiver were granted, the STUYVESANT would be chartered to the SOHIO Petroleum Corporation ("SOHIO") for use in the Alaska Oil trade. (The request is attached hereto as Exhibit A and incorporated herein by reference.)

25. The MSB, by published notice, opened a Docket, S-565, for the Polk request and invited public comment, 42 Fed. Reg. 37229 (1977).

26. On August 8, 1977, Plaintiff Shell, among others, filed comments that the Polk request was beyond the lawful authority of MSB.

27. Polk apparently modified its request on August 25, 1977, by a letter to the MSB not made available to, or served on, Shell.

28. By two letters dated August 31, 1977, without notice to or service on Shell, the Assistant Secretary and the MSB ruled that Polk could operate the STUYVESANT in domestic trade without limitation, provided that the CDS was repaid over 20 years pursuant to an interest bearing promissory note secured by a third preferred ship mortgage on the vessel. The letters did not require payment of any interest on the CDS received by Seatrain for the approximate 5 year construction period. The letters further provided that Polk's eligibility for guaranteed debt financing under Title XI of the Act would be determined according to a construction price reflecting the full value of the CDS to be repaid, even though none of the CDS had in fact been repaid and would not be fully repaid for a period of 20 years. By so providing, the Assistant Secretary and the MSB has permitted Polk to "double finance" the CDS portion of the construction price. Consequently Polk and Seatrain will have received funds amounting to approximately 120 percent of the vessel's construction costs and exceeding the 87.5 percent lending limit of Title XI. (The letters are attached hereto as Exhibits B1 and B2 and incorporated herein by reference.)

29. The letters cite no legal authority for the MSB action. On its face, the action is plainly in conflict with numerous provisions of the Merchant Marine Act and

underlying regulations, and Defendants are wholly without power to take the action described above.

30. The Secretary's regulations, 46 C.F.R. § 202.1 (1976), provide that an MSB order becomes final in 20 days unless (1) the Secretary reverses or suspends it or (2) an interested party requests Secretarial Review within 10 days. If a party requests review within 10 days, another party has five days to oppose review. Whether or not review is opposed within five days, the Secretary has an additional 10 days to act (or 25 total days after the Assistant Secretary of MSB action). If the Secretary does not reverse or stay the action within that time, it becomes final.

31. Shell filed a timely request for review on September 12, 1977, the first business day following the tenth day after August 31, 1977. If the request was timely, the Assistant Secretary and the MSB orders become final on September 26, 1977, if the Secretary fails to act or declines to review the orders, or such sooner date on which the Secretary approves the orders.

32. Polk, in its opposition to Shell's request filed September 14, 1977, stated to the Secretary that although the Assistant Secretary and MSB letters approving the waiver of CDS restrictions on the STUYVESANT were dated August 31, 1977, the "action" took place on August 30, 1977. If this argument is correct, the Assistant Secretary and MSB order became final on September 19, 1976. Polk has informed the Secretary that it, Seatrain, SOHIO, and General Electric Credit Corporation, a third party involved in the financing, have scheduled a closing for the STUYVESANT on September 23, 1977.

33. The MSB decision to waive CDS restrictions on the STUYVESANT and the failure of the Secretary to reverse the MSB decision is arbitrary, capricious, an abuse of discretion, and contrary to the law in that:

a. it is in violation of the Merchant Marine Act of 1936, as amended, and regulations promulgated thereunder;

b. it is based upon the Defendants' unlawful and arbitrary interpretation of the Merchant Marine Act of 1936, as amended;

c. it effectively denies Shell property without due process of law.

34. Shell will be immediately and irreparably harmed by the implementation of the Assistant Secretary and MSB rulings and the resulting consummation of the STUYVESANT transaction which contemplates a three-year charter to SOHIO. SOHIO is the only potential subchapter for Shell's vessels.

35. Shell has exhausted all administrative remedies.

IV. *Prayer*

WHEREFORE Plaintiff prays as follows:

a. That the Court enter a judgment declaring that defendant MSB's entry and the defendant Secretary's approval of the August 31, 1977, decisions of the MSB regarding the repayment of CDS subsidy and the removal of any restrictions prohibiting the STUYVESANT from being used in domestic trade are arbitrary and capricious, an abuse of discretion and otherwise unlawful;

b. That the Court enter an order prohibiting, restraining, and enjoining Defendants from implementing, now or in the future, the MSB's decision with respect to the STUYVESANT.

c. That the Court enter a judgment declaring that Defendant Secretary or her designated representative, Defendant Assistant Secretary are without power to authorize or approve financing guarantees on the STUYVE-

SANT under Title XI of the Act, or to commit to guarantee financing on the STUYVESANT under Title XI of the Act in accordance with the Assistant Secretary's letter of August 31, 1977.

d. That the Court enter an Order prohibiting restraining and enjoining Defendant Secretary or her designated representative, Defendant Assistant Secretary from authorizing or approving financing guarantees on the STUYVESANT, or committing to guarantee financing on the STUYVESANT under Title XI of the Act in accordance with the Assistant Secretary's letter of August 31, 1977.

e. That the Court enter such further temporary and preliminary orders as may be necessary to preserve Plaintiff's rights;

f. That the Court enter such further and order relief as the Court may deem necessary and appropriate in the circumstances of this case.

Respectfully submitted,

/s/ Stephen N. Shulman
STEPHEN N. SHULMAN

/s/ Joseph A. Artabane
JOSEPH A. ARTABANE

/s/ Mark C. Ellenberg
MARK C. ELLENBERG
CADWALADER, WICKERSHAM & TAFT
11 Dupont Circle, Suite 450
Washington, DC 20036
(202) 387-8100

Washington, D.C.: ss

AFFIDAVIT OF VERIFICATION

I, THOMAS J. LENGYEL, being duly sworn, depose and say:

1.

My name is Thomas J. Lengyel. I am the Manager, Marine Department of the Transportation and Distribution Department, Shell Oil Company, One Shell Plaza, Houston, Texas.

2.

In my employment with Shell, I am responsible for the implementation of all corporate plans necessary to provide marine transportation for Shell Oil Company and Shell Chemical Company.

3.

In the course of my employment with Shell, I have become personally familiar with the facts relating to the transportation activity of Shell Oil Company as it relates to the foregoing Complaint.

4.

I have read the foregoing Complaint (Declaratory and Injunctive Relief) and know the contents thereof. The facts stated which I know of first hand knowledge are true and those stated upon information and belief, I believe to be true.

/s/ Thomas J. Lengyel
THOMAS J. LENGYEL

Subscribed and sworn to before me this 22nd day of September, 1977.

/s/ Shawn E. Kearsey
Notary Public

My Commission Expires August 31, 1982.

EHXIBIT A

SEATRAIN LINES

1 Chase Manhattan Plaza
New York, New York 10005

HOWARD M. PACK, *President*

July 8, 1977

Honorable Robert J. Blackwell
Assistant Secretary for Maritime Affairs
United States Department of Commerce
Room 3898-B
Washington, D.C.

RE: *Polk Tanker Corporation*

Dear Sir:

Seatrain Shipbuilding Corp. an affiliate of Seatrain Lines, Inc., is owner of the VLCC Stuyvesant, being constructed for Polk Tanker Corporation ("Polk") at the Seatrain shipyard. Polk, on its behalf and that of any successor in interest, as owner or bareboat charterer, hereby requests approval of the Assistant Secretary ("the Secretary") of a time charter with The Standard Oil Company, an Ohio Corporation ("Sohio") for operation of the Stuyvesant in the Alaska (domestic) trade for a period of three years from date of delivery of the vessel. In return, Polk, or such successor in interest, would agree to repay or cause to be repaid, to repay, on a monthly basis during the period of the time charter, an amount which bears the same proportion to the construction-differential subsidy paid by the government to Seatrain Shipbuilding Corp. in respect of the construction of the Stuyvesant as the period of operation under the time charter bears to the entire life of the vessel. The Secretary is requested to grant this permission pursuant to the discretion vested in him by § 207 of the Shipping Act, 1918, ["MMA"] as amended ("the Act").

Polk entered in a contract in Construction Differential Subsidy for the Stuyvesant on June 30, 1972. At that time prospects for the employment of the vessel in the foreign trade appeared promising. Polk undertook to build the vessel in the expectation that a long-term charter would become available before completion of the vessel. Since that time, however, circumstances entirely beyond the control of Polk or its affiliates have made such a charter an impossibility. There is, at present, no possible way in which the vessel could be utilized in the foreign trade of the United States. Even if a charter were available, current rates would preclude any return to the vessel for interest payment or amortization.

As the Assistant Secretary is aware, due to the worldwide drop in tanker rates, Polk and its affiliates, including Seatrain Lines, Inc. and Seatrain Shipbuilding Corp. were faced with short-term cash problems which required the temporary closing of the Seatrain Shipyard, and the laying off of substantially all of its employees, and jeopardized the continuation of Seatrain's other operations.

Seatrain's short-term problems were resolved at that time through the negotiation of a loan guaranteed by the Economic Development Administration. That loan guarantee was collateralized in part, by pledges and security derived from the expected value, at completion, of the Stuyvesant. MARAD and the EDA valued the collateral based upon their expected use of the vessel in the Alaska trade.

The vessel was originally financed with $30,200,000 in Title XI insured debt financing. Level semi-annual debt repayment of $1,528,000 (plus or minus $5,000) commenced November 1, 1975. There is currently $28,845,000 insured indebtedness outstanding on the vessel.

Seatrain Shipbuilding Corp. has outstanding notes payable to banks due in 1980, 1982 and 1983 totaling $77,-

000,000. The Stuyvesant will be looked to for repayment of half this amount, or $38,500,000.

In order to arrange repayment of this indebtedness, substantially all of which is insured by the Department of Commerce, the vessel must be chartered. Seatrain has arranged a three-year time charter to Sohio for use in the Alaska trade at $5.40 per DWT. This time charter will generate a net cash flow sufficient to service the indebtedness on the vessel, including the second mortgage which the vessel would carry as part of a sales transaction, and the annual repayment of the pro rata portion of CDS. In addition it would generate a substantial net cash flow over the three-year charter after debt service and CDS repayment which would be available for deposit in a restricted fund to help ensure debt repayment in years following the expiration of the time charter.

Upon execution and approval of the charter, Polk would negotiate for the sale of the vessel in a leveraged lease transaction. The purchase price is to be approximately $86,000,000; financing will include the existing Title XI debt, an insured second mortgage on the vessel, and the equity owner's cash contribution.

The sale of the vessel by Polk will generate approximately $26 million in cash. Pursuant to the terms of the agreement with the equity owner, this will be placed in an interest-bearing fund to protect the equity owner against loss in the event of default. As the amount required to indemnify the equity owner declines, the amount in the fund will become available to repay the indebtedness on government insured loans, and for the building of reserves for future repayment. Thus virtually all the net cash proceeds of the charter and the sale will be utilized to retire the government insured indebtedness and reduce the government's exposure to collection on its guarantees.

The Secretary's permission for Polk to utilize the vessel in the domestic trades is necessary for the realization of the charter and the sale revenues. Without the charter no sale is possible.

Conversely, the failure to approve the proposed time charter could trigger a default and subsequent major loss to the government. Unless the Secretary approves the proposed contract amendment, allowing Polk or its successor to utilize the vessel in the domestic trade, Seatrain faces the possibility that it will be unable to continue the repayment of the Title XI insured debt, and will be forced to default on its obligations in this respect. Thus the government faces a situation involving the very real possibility of default with respect to approximately $116,000,000 in debt insured by the Department of Commerce.

In addition to the potential loss to the government if Seatrain defaults, the Seatrain Shipyard would probably be closed. This would result in the loss of over 2,500 jobs in New York City and the loss of a valuable shipbuilding facility. Approximately 85 percent of the yard's work force are members of disadvantaged minority groups. Seatrain's experience with the previous yard closing demonstrates that the vast preponderance of these employees are not readily re-employable and will require government funded benefits.

On the other hand, the yard, if kept open, is a going facility, generating new jobs and productively employing thousands of persons in the generally depressed New York City area. The yard is attracting new orders, and will continue, on a self-sustaining basis, to help carry out the mandate of Section 101(e) of the Act to maintain efficient facilities for shipbuilding.

The remainder of this memorandum discusses the authority of the Secretary of Commerce to enter into the proposed transaction under § 207. The basis of this argu-

ment is that the language concerning preservation and improvement of collateral in § 207 is an independent grant of authority which gives the Secretary broad power to protect the government's collateral. In order to invoke this provision of § 207, the Secretary must be faced with a realistic possibility of default, an expected economic loss on default, and an economically viable method for avoiding that default. These circumstances are present here. The Secretary, therefore, has the discretion to avoid a default through the approval of this request.

I. CONGRESS GRANTED THE SECRETARY SPECIFIC AND INDEPENDENT AUTHORITY UNDER § 207 TO "PROTECT, PRESERVE OR IMPROVE THE COLLATERAL HELD . . . TO SECURE INDEBTEDNESS"

Section 207 of the Act reads, in relevant part, as follows:

> "The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this Act, *or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness*, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter." [Emphasis added.]

In plain terms, § 207 sets forth a specific grant of authority empowering the Secretary, to "protect, preserve, or improve" its collateral. Under that section, this grant of authority appears wholly apart from the more general reference to the other "activities authorized by this Act," and was intended by Congress as an addition to the authority otherwise available to the Secretary under other provisions of the Act. In fact, in 1938, Congress amended § 207 to explicitly provide for this authority,

which was deemed necessary for the sound and efficient administration of the Act and for protection of the government's interests generally. It is precisely in circumstances such as those giving rise to this application that the Secretary's authority under § 207 was designed to be exercised. For unless the Secretary acts to preserve and improve its collateral in these circumstances, the government could incur substantial liabilities on its loan guarantees.

On the other hand, the approval requested here will clearly protect and improve the Secretary's collateral. The vessel must, in the immediate future, be used in the domestic trade. Currently available foreign charters would not make the government whole in the event of default. The vessel's value, and therefore the government's collateral, depends on its operation in the domestic trade; the charter for which approval is sought will therefore not only protect the government's collateral by preventing a default, but will improve it to the point where the government will have to face neither the prospect of a laid-up, unchartered asset, nor a protracted default proceeding.

The legislative history of § 207 underscores the importance attached by Congress to this specific and independent grant of authority for the preservation of collateral. In its Report, the Senate Committee on Commerce explained the amendment to § 207 as follows:

> "Section 207 of the Act now provides that 'the Commission may enter into such contracts upon behalf of the United States, as may, in its discretion, be necessary to carry on the activities authorized by this Act, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter'. The amendment adds that it 'may make such disbursements as may, in its discretion be necessary 'to protect, preserve, or improve

> the collateral held by the Commission to secure indebtedness', as is the practice in the private corporation." S. Rep. No. 618, 75th Cong. 3rd Sess. (1938)

Prior to the 1938 amendments, the Act made no mention of any authority to "protect, preserve or improve" collateral; the Secretary was arguably foreclosed under § 207 from entering into contracts for that purpose. In other words, the "activities authorized by this Act" arguably did not include the preservation of collateral. This was obviously a serious gap in the Secretary's overall authority under the Act. In response, Congress amended § 207 to clearly and unequivocally provide the Secretary the authority to "protect, preserve or improve" collateral. This additional grant of authority was designed to supplement the other "activities authorized by this Act", and to correspondingly enlarge upon the scope of the Secretary's contractual authority.

It is therefore evident from a straight-forward reading of § 207 and its history that it was Congress' intent to supply the Secretary with authority under the Act to protect the government's collateral. Nor was this Congressional intent lost on those courts which have subsequently reviewed § 207, its history and its significance. As the United States District Court for the District of Columbia has stated, upon rejecting a narrow construction of § 207:

> It seems obvious from these reports that the draftsman was in doubt as to whether or not a contract 'to protect, preserve', etc., collateral was within the 'activities authorized by this act' even though the draftsman had so intended it; therefore the amendment addition was in order to make this certain. The scope of authority which may or may not have included such a purpose previously certainly included it thereafter.

> . . . [Plaintiff's contention is] to say that in constructing the word 'preserve', in Sec. 1117 the Court should find the interest of Congress to be that the Commission or any private corporation with like powers must as a rescuer of its collateral sit idly by and watch while all is lost. This does not make sense." *Dollar* v. *Land*, 82 F. Supp. 919, 923, f.n. 1. (D.D.C. 1948), rev'd on grounds that sovereign immunity not applicable, 81 U.S. App. D.C. 28, 154 F.2d 307 (1946) aff'd 330 U.S. 731 (1951).

Similarly, § 207 empowers the Secretary to take the action requested in this application. Pursuant to its authority under that section, the Secretary need not "sit idly by and watch while all is lost."

II. THE LIMITATIONS ON THE SECRETARY'S ACTION UNDER THE GENERAL AUTHORITY OF § 207 ARE NOT APPLICABLE WHEN THE SECRETARY ACTS TO PROTECT, PRESERVE, OR IMPROVE COLLATERAL

On a few occasions the Comptroller General has limited plans to utilize § 207 where there appeared to be a conflict with other provisions of the Act. In none of those cases, however, was the question of the protection, preservation or improvement of collateral in question.

It is not the applicant's contention that § 207 as a whole is a general license to avoid the terms of the Act whenever the Secretary finds it convenient to do so. The Comptroller General has ruled out such an interpretation. The Comptroller General's limitations, however, have been imposed when the Secretary has sought to utilize the general authority of § 207 to make contracts or disbursements "necessary to carry on the activities authorized by this Act" in contravention of other terms of the Act. For example, in the Opinion of the Comptroller General concerning American President Lines, B-135884, 38

Comp. Gen. 722 (1959), a plan was disapproved whereby the Secretary would, through actions as an escrow agent, undertake liabilities in excess of those authorized by Title XI as then in effect. The justification offered by the Secretary for that undertaking was that it would aid in carrying out the policies expressed in § 101 of the Act. In ruling that the language in § 207 limited the Secretary to activities authorized by the remaining provisions of the Act, the Comptroller General was clearly on firm ground. The language of the first part of § 207 cannot be a mandate for overruling the balance of the Act. Such a reading would leave the remaining language in the Act with little purpose.

Similarly, in 1952 the Comptroller General rejected the Secretary's contention that the Comptroller General could not oversee the activities of the Maritime Administration because of the broad language in § 207 giving the Secretary authority to carry out the policies of the Act. The Comptroller General asserted that the remaining language of the Act limited the Secretary's actions. Against the Secretary's assertion of unfettered license to ignore the Act, it is hard see how a different result could have issued. The much more narrow authority to protect, preserve, or improve collateral, however, was not in issue. Opinion of the Comptroller General concerning sales under the Merchant Marine Act of 1936. As amended, B-58323, 31 Comp. Genl. 695 (1952).

The language in the Act allowing the Secretary to protect his existing investment suffers no such limitation. By giving that language independent meaning to act in any emergency where the likely alternative could be default, the Secretary is not rendering the remaining language in the Act meaningless; absent a threat to the collateral, the Secretary's actions are limited to the express or implied terms of the Act.

The Comptroller General has recognized the need to give § 207 independent meaning in order to protect the government's collateral. In the Opinion of the Comptroller General concerning the SS Matsonia, B-151860, 43 Comp. Gen. 98 (1963), the Comptroller General found, under the authority of § 207 to protect, preserve and improve collateral that the Secretary could reschedule debt, notwithstanding language in § 1106 which might have prohibited such an action. The Comptroller General specifically said that under such circumstances the Act must be construed so as to effectuate its policies and purposes, and so as to avoid rendering § 207 meaningless. A similar interpretation is warranted here.

III. CONGRESS INTENDED THAT THE SECRETARY'S CONTRACTUAL AUTHORITY UNDER § 207 BE BROADLY CONSTRUED.

Section 207 authorizes the Secretary to contract to "carry on the activities authorized by this Act . . . in the same manner that a private corporation may contract within the scope of the authority conferred by its charter." As the legislative history makes clear, it was Congress' intention that this analogy to the powers of a private corporation be construed as a conferral of the broadest contractual authority. The analogy employed by the drafters was designed to ensure the most expansive reading of the powers granted under § 207. As the House Report on the 1938 amendments stated in analyzing § 207:

> "The amendment (empowering the Commission to 'preserve, protect or improve' collateral) is designed to make clear a power which it is thought already existed in the Commission but about which some doubt has been expressed. Under the Act, the Maritime Commission has all the general and implied powers of a business corporation. H.R. Rep. No. 1268, 75th Cong. 3rd Sess, at 17. (1938)

Furthermore, judicial construction of the authority granted under § 207 has been similarly liberal, reflecting the thoroughly expressed, and commonly understood, legislative intent:

> "First of all as to the power [under § 207] of the Maritime Commission to enter into a transaction of the character it alleges it did, the court holds that it has the power to negotiate and to take absolute title to the stock in question. It was created, from a functional point of view, for the purpose of permitting the conduct of its business in a manner similar to that of private enterprise and free as a consequence of the ordinary inhibitions applied to the regular executive branches of the government.
>
> Its powers in this respect are similar to that of a business corporation." *Dollar* v. *Land*, supra, at 922. (citations omitted).

In short, Congress intended that the analogy to private corporations set forth in § 207 be understood as a broadly gauged grant of power to the Secretary. Congress chose to express its intention through analogy, and it is only as an analogy that the "private corporation" language of § 207 can be properly understood. Furthermore, if correctly viewed as an analogy, § 207 could sustain a restrictive reading only if Congress, in turn, is presumed to have selected an extremely poor and misleading analogy for its purposes. It is a commonplace of modern corporate law that a corporation's powers are too broadly construed, and that, in practice, few corporate acts are beyond "the scope of the authority conferred by its charter." Indeed, the traditional doctrine of *ultra vires*, which traditionally prohibited acts by a corporation beyond the "scope" of its charter, has experienced so steady and complete a decline that "within a few years the subject of *ultra vires* will be of historic value only." N. Lattin, *The Law of Corporations*, § 66 (2d ed., 1971). Congress surely understood the import of the analogy which it selected, as corroborated by the unqualified emphasis of the legislative history on "all the general and implied powers of a business corporation" which the Secretary was intended to possess under § 207.

IV. THE SECRETARY HAS DISCRETION TO RESOLVE CONFLICTS BETWEEN § 207 AND § 506 OF THE ACT.

Polk and Seatrain are seeking the Secretary's approval of a three-year transfer of the Stuyvesant to service in the Alaska trade. A transfer of this duration is required to enable Seatrain to generate the cash needed to service the debt on the Stuyvesant, and to thereby avoid default on its insured loans. Since a default by Polk and Seatrain would trigger government liability on Title XI insured debt, the Secretary's approval of this transfer should lawfully be based on its authority under § 207 to "protect, preserve or improve" collateral.

The Act contains a grant of authority under § 506 allowing the Secretary to consent to the transfer to the domestic trades for periods up to six months per year. Arguably this grant of authority conflicts with the need under § 207 for the three year charter in order to generate sufficient revenue to prevent the default by Polk and Seatrain. This conflict may be more apparent than actual, however.

Previous interpretations of § 506 have found, where economically necessary, implied authority to transfer a vessel to the domestic trades notwithstanding the statutory time limitation, Opinion of the Comptroller General concerning the S.S. Santa Leonor, B-155039, 44 Comp. Gen. 130 (1964). While the statute was admittedly silent on the point, the Comptroller General found that so long as repayment of CDS was provided, the Secretary had

authority to allow transfer of the vessel to the domestic trade. Obviously, then, the time limitations imposed by § 506 do not fully occupy the field, especially where, as both for the Santa Leonor and the Stuyvesant, economic necessity requires a transfer for a longer period of time. The implied authority found by the Comptroller General in 1964 can be equally applicable to an exercise of this authority to transfer a vessel to the domestic trade pursuant to § 207 rather than § 506.

If, however, it is accepted that § 506 does conflict with approval of this charter, then the Secretary must resolve any such conflict in the interest of effective administration of the Act, through a careful weighing of the policies underlying both §§ 207 and 506 in light of the circumstances of the particular case. Conflicts and inconsistencies arise inevitably out of the legislative drafting process, particularly where, as here, the statute in question has undergone various amendments over a forty year history. These conflicts and inconsistencies must be resolved if the Secretary is to discharge its responsibilities under the Act.

Well accepted canons of statutory construction require a resolution which allows § 207 to serve the function intended by Congress. It is axiomatic that provisions within a statute should be construed harmoniously, and should not be permitted effectively to cancel out one another. This has been otherwise stated by the United States Supreme Court as "the rule which requires that a practice which is permitted by one section should not be prohibited upon the theory that it is forbidden by another." *United States of America* v. *Louisville and Nashville Railroad Company*, 235 U.S. 314, 326 (1914). It is a rule widely followed by the courts in matters of statutory construction. *See*, *R.V. McGinnis Theatres* v. *Video Independent Theatres, Inc.*, 262 F. Supp. 607, 613-614 (N.D. Okla.), *aff'd*, 386 F.2d 592 (10th Cir. 1967); *In Re Presault* 130 Vt. 343, 292 A.2d 832, 834-835 (Sup. Ct. 1972); *Cooper Motors* v. *Commissioners*, 131 Colo. 78, 279 P.2d 685, 688 (1955).

In some instances, this rule of construction may require that where two provisions of a statute cannot be construed consistently or harmoniously under all circumstances, one such section must be interpreted to prevail or supersede the other under the particular circumstances involved. Since § 506 would conflict with the Secretary's ability to take an action necessary for the preservation of the collateral in this case, § 506 would have to give way to § 207.

An illustration of the approach urged upon the Secretary here can be found in *Commissioner* v. *Credit Alliance Corp.*, 316 U.S. 107 (1941). In that case, the Supreme Court confronted a conflict between § 27(f) and 27(h) of the Internal Revenue Act of 1936 governing the application of "dividends—paid credit" to a corporation making distributions in liquidation. The liquidating corporation in *Credit Alliance* was seeking this credit on distributions made to its parent company. Briefly stated, under the clear terms of § 27(f), the liquidating corporation was entitled to a dividends-paid credit on this distribution to its parent company, whereas under the equally clear terms of § 27(h), a dividends-paid credit under these circumstances was prohibited. The Court chose to resolve the conflict in favor of allowing the credit in the particular case before it, and stated as follows:

> "As above said, each of the subsections of § 27 deals with a specific and particular topic. Subsection (f) deals with 'distributions in liquidation' while subsection (h) deals with 'non-taxable distributions'. If (f) applies in this case, (h) is left to cover a substantial field of other sorts of distributions. We should, of course, read the two sections as consistent rather than conflicting, if that be possible. Here,

> it is not only possible but begets no absurb or impractical result. We hold that (h) is not applicable to the facts of this case and that (f) is." *Commissioner* v. *Credit Alliance Corp., supra,* at 111-112.

The Court's approach in *Commissioner* v. *Credit Alliance Corp.* applies with equal force to the issue presented in this application. Here, if § 207 were viewed as controlling, the result would not be either "absurb or impractical." On the contrary, unless the Assistant Secretary exercises discretion by approving the charter of the Stuyvesant for a three year period, the policy underlying § 207 will be frustrated. Without approval of this charter, the possibility of improving the government's collateral is doubtful.

The exercise of the discretionary authority under § 207, moreover, not only effectuates the policy of improving the government's collateral, but also aids in carrying out the policies set forth in § 101. By protecting the government's collateral under § 207 the government will also assure the continuation of the shipbuilding facility, rather than the potential permanent loss of the facility. The approval would, therefore, not only satisfy the statutory standard of § 207, but the broader policies underlying the Act as well.

CONCLUSION

Section 207 confers upon the Secretary specific and independent authority to "preserve, protect or improve" the government's collateral. Congress intended this authority to be exercised in circumstances such as those present here, where there is a genuine and immediate threat to the government's collateral, but also an economically viable approach to the protection of that endangered collateral, as outlined above. If, under these circumstances, the Secretary is deemed powerless to act under § 207, the expressed Congressional mandate underlying that section would have little practical meaning or significance. For

these reasons, Polk requests that the Secretary approve its proposed time charter with Sohio for operation of the Stuyvesant in domestic trade for a period of three years.

/s/ Howard M. Pack
HOWARD M. PACK

[SEAL]

EXHIBIT B1

UNITED STATES DEPARTMENT OF COMMERCE

Maritime Administration
Washington, D.C. 20230

August 31, 1977
Polk Tanker Corporation
One Chase Manhattan Plaza
New York, New York 10005

Gentlemen:

For over two years the Maritime Administration has been considering the possibility that at the time of delivery there might be no market for the STUYVESANT other than the movement of Alaskan oil to the lower 48 states. The Economic Development Agency in June 1975 agreed to guarantee additional funding to Seatrain Shipbuilding Corporation to reopen its yard to complete this vessel taking into account the same possibility. In light of the fact that several years of work and negotiations have generated no other opportunities for employment of this vessel, and being persuaded that approval of the proposed CDS repayment and the time charter of the Sohio Petroleum Company will improve the collateral position and prevent possible default on various obligations insured and guaranteed by the Department of Commerce, and failure to approve the proposal would jeopardize continued operation of the Seatrain Shipbuilding Corporation, the Maritime Subsidy Board (Board)/ Assistant Secretary of Commerce for Maritime Affairs (Assistant Secretary) with respect to the requests dated July 12, 1977 and August 25, 1977, from Polk Tanker Corporation (Polk) pertaining to the T. T. STUYVESANT, took the following actions on August 30, 1977:

I. By the Assistant Secretary:

A. Approved, pursuant to sections 9, 37 and 41 of the Shipping Act, 1916, as amended (the Shipping Act), the time charter by United States Trust Company of New York, as owner trustee, and Queensway Tankers, Inc., as charter owner, of the tanker Builder's Hull No. 102 (to be documented under U.S. flag and named STUYVESANT), to Sohio Petroleum Company, a Delaware corporation but not a citizen of the United States within the meaning of section 2 of the Shipping Act, for a period of three (3) years commencing on or about the date of Maritime Administration approval, for the carriage of crude oil and/or dirty petroleum products in permissible worldwide trade, upon the conditions: (1) that without the prior written approval of the Maritime Administration the vessel shall not be subchartered to aliens, except as may be permitted by General Order 59, 2d Revision, as amended; and (2) that the operating range of said vessel shall not include the Soviet Union, Latvia, Lithuania, Estonia, Czechoslovakia, Hungary, Bulgaria, Albania, North Korea, the Soviet Zone of Germany, Manchuria, the People's Republic of China, Cambodia, North Vietnam, South Vietnam, Cuba or Southern Rhodesia, unless otherwise permitted by regulations of the Department of Commerce.

II. By the Board:

A. Found, pursuant to section 501(a) of the Merchant Marine Act, 1936, as amended (the Act), that United States Trust Company, as owner trustee and Queensway Tankers, Inc., as charter owner, are acceptable transferees of the T. T. STUYVESTANT, subject to both companies demonstrating their U.S. citizenship, under section 2 of the Shipping Act, to the satisfaction of the General Counsel.

B. Approved, pursuant to Article 14 of Board Contract No. MA/MSB-165, the assignment of the T. T. STUYVESANT to United States Trust Company as owner trustee and the bareboat charter of the vessel to Queensway Tankers, Inc.

C. Authorized the repayment to the United States on the date of delivery of the T. T. STUYVESANT, of the total amount of construction-differential subsidy paid in connection with the construction of the vessel, including the cost of National Defense Features, as determined by the Maritime Administration, in the form of a promissory note issued by Polk and to be assumed by the United States Trust Company as trustee upon purchase of the vessel, payable in level installments of principal and interest, semi-annually in arrears for twenty years beginning on the date of delivery of the vessel, provided that:

(1) The note is secured by a preferred ship mortgage on the vessel to be given by the owner trustee in favor of the United States which will be subject and subordinate to a first preferred mortgage and second preferred mortgage to be given by the owner trustee to secure obligations insured and/or guaranteed under Title XI of the Act, in connection with financing the vessel.

(2) The note is also secured by the owner trustee's interest in (a) the bareboat charter; (b) the time charter; and (c) the Seatrain Security agreement.

(3) All documents related to the repayment of CDS have been found to be satisfactory, in form and substance, to the Office of the General Counsel.

D. Determined that interest is payable on the promissory note authorized in paragraph C above,

with interest thereon to be at the same rate borne by the second tier of Title XI debt from date of execution.

E. Authorized the amendment of Board Contract No. MA/MSB-165 to release the vessel owner from all restrictions, obligations and duties contained therein, except those contained in Articles 4 and 11 pertaining to the right of the Board to the engineering and design data for the vessel, and the purchase and requisition rights of the United States to the vessel pursuant to section 802 of the Act, respectively. It shall be understood that with respect to the compensation formula contained in Article 11, the amounts of CDS repaid pursuant to paragraph C above, shall be considered in the calculation of compensation.

F. Authorized the Assistant Secretary of Commerce for Maritime Affairs (the Secretary), on behalf of the Board, to accept or enter into the following documents:

1. Promissory Note from Polk;

2. Novation Agreement among United States Trust Company as owner trustee, Polk and the Secretary;

3. Security Agreement between United States Trust Company as owner trustee and the Secretary; and

4. Preferred Ship Mortgage (Third) between United States Trust Company as owner trustee and the Secretary

in substantially the form submitted, proof date August 25, 1977, or with such changes as the Secretary shall approve and delegated to the Assistant Administrator for Maritime Aids authority to take all

actions necessary in connection with the administration of the above mentioned documents.

Your attention is invited to the provisions of Department of Commerce Organization Order 10-8, section 7, and we ask that you indicate your acceptance of the above actions by signing, dating, and returning the enclosed copy of this letter.

Sincerely,

/s/ James S. Dawson, Jr.
JAMES S. DAWSON, JR.
Secretary

Enclosure

[SEAL]

EXHIBIT B2

UNITED STATES DEPARTMENT OF COMMERCE

Maritime Administration
Washington, D.C. 20230

August 31, 1977
Polk Tanker Corporation
One Chase Manhattan Plaza
New York, New York 10005

Queensway Tankers, Inc.
110 Wall Street
New York, New York 10005

Gentlemen:

With respect to the proposed sale of the STUYVESANT (Vessel) by Polk Tanker Corporation (Polk) to The United States Trust Company of New York (Shipowner), not in its individual capacity but solely as owner trustee under a Trust Agreement between it and General Electric Credit Corporation (GECC), and the proposed additional bond sale, you are advised that on August 30, 1977, the Assistant Secretary for Maritime Affairs (Secretary) took the following actions:

I. Approved the Shipowner, not in its individual capacity but solely as owner trustee under a Trust Agreement between it and GECC, as lessor under the lease financing arrangement.

II. Found that Cove Shipping, Inc. (Cove) possesses the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the Vessel.

III. Approved Queensway Tankers, Inc. (Queensway) as bareboat charterer and, found pursuant to Section 1104 (b)(1) of the Merchant Marine Act, 1936, as amended

(Act), subject to compliance with the requirements herein stated, and the execution of the Management Agreement required below, that Queensway and the Shipowner possess the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the Vessel.

IV. Approved the proposed sale and lease financing arrangement, whereby Polk will assign its rights and obligations under the construction contract for the Vessel to the Shipowner, pursuant to Section 8.01 of the Trust Indenture.

V. Required that the lease terms of the sale and lease proposal be subject to approval by the Maritime Administration including, but not limited to, the lease rate, indemnification, etc.

VI. Found under Section 1104(d) of the Act that the property or project with respect to which the additional guaranteed obligations will be issued remains, in his opinion, economically sound.

VII. Determined, pursuant to Sections 1101(f) and 1104(b)(2) of the Act, that the final actual cost of construction of the Vessel is as follows:

Construction Costs	$70,180,428
Net Interest	5,372,679
Total Actual Cost	$75,553,107

On this basis fixed the guarantee amount at $60,200,000, which amount does not exceed 87½% of the actual cost of the Vessel.

VIII. Found that on the basis of the repayment of construction-differential subsidy (CDS) the Vessel is eligible for a guarantee in an amount not to exceed 87½% of the actual cost of construction of the Vessel.

IX. Approved the amortization of the proposed additional obligations ($31,355,000) on a twenty year level debt service basis (equal payments of principal and interest).

X. Required Queensway to execute a Management Agreement with Cove and required that said Management Agreement be approved in form and substance by the Secretary.

XI. Required that at or prior to the guarantee closing the Economic Development Administration (EDA) subordinate its preferred position on the BAY RIDGE, presently being constructed at Seatrain, in favor of the Maritime Administration.

XII. Required that Chase Manhattan Bank, N.A., (Chase) agree to subordinate their position on the BAY RIDGE to the Maritime Administration and to EDA up to $40,000,000 even should the Letters of Credit issued by Chase for use with respect to the BAY RIDGE be drawn down.

XIII. Required that Queensway execute a Title XI Reserve Fund and Financial Agreement (Financial Agreement) in the form of our standard Financial Agreement dated December 1, 1974.

XIV. Required that Queensway deposit 100% of its profits into the Reserve Fund until it has accumulated an amount in the Reserve Fund and Seatrain Security Fund equal to 50% of the outstanding principal balance of the First and Second Mortgage.

XV. Required that for purposes of Section 12 (negative covenants) of the Financial Agreement the working capital and net worth requirements be set at $11,027,700 for both.

XVI. Required that at or prior to the guarantee closing, the Shipowner have funds available equal to the difference between the outstanding indebtedness on the Vessel and the capitalizable cost of the Vessel (approximately $32.7 million).

XVII. Required that at the guarantee closing Queensway have working capital sufficient to supply the Vessel on its

initial voyage, obtain the necessary marine insurance, and pay the Title XI guarantee and insurance fees and that an officer of Queensway certify that Queensway has this amount.

XVIII. Required that for purposes of meeting the working capital requirement of Section 12 of the Financial Agreement, 50% of the amounts in the Reserve Fund will be counted towards working capital so long as the 100% deposit of profits requirement is in effect.

XIX. Required that Seatrain establish a Seatrain Security Fund and deposit into this fund from the escrowed equity investment of GECC plus its earnings any amounts in excess of those required to protect GECC.

XX. Determined that Seatrain will not have to make deposits into the Seatrain Security Fund if the amount on deposit in the Security Fund plus the amount in the Reserve Fund equals 50% of the outstanding indebtedness (relating to the First, Second, and Third Mortgages) related to the Vessel.

XXI. Considered the release of the Seatrain Security Fund to Seatrain if any of the following conditions are met:

(A) If Queensway should secure a time charter or contract of affreightment to an acceptable credit risk, as determined by the Secretary, equal to at least ½ of the remaining original term of the bareboat charter wherein (1) the charter hire is sufficient to service the bareboat charter hire and is paid on a hell-and-highwater basis, (2) the operating component of the charter hire is sufficient for all operating expenses, and (3) there is a reasonable profit to Queensway.

(B) If Queensway should secure a time charter or contract of affreightment meeting all the conditions in (A) above except that it was not for ½ of the remaining

original term of the bareboat charter, and if this time charter or contract affreightment plus the amount in Queensway's Reserve Fund assured the payout of at least 50% of the outstanding indebtedness of the Vessel at the end of the charter period.

(C) If the Vessel is sold to a buyer possessing acceptable substantial credit as determined by the Secretary.

(D) If Queensway were to merge into a company that has sufficient assets and credit, as determined by the Secretary, to service the bareboat charter hire.

(E) The presence of any other conditions or circumstances as determined by the Secretary which would give the Maritime Administration security in an amount at least equal to any of the four above stated conditions.

XXII. Required Queensway to (1) establish United States citizenship in form and manner prescribed in 46 CFR 355 within 30 days after date of this Commitment or this Commitment may be terminated by the Secretary at his sole discretion; provided, however, if a Commitment to Guarantee Obligation closing is scheduled to occur within said 30 days period, required such parties to establish United States citizenship at least 15 days prior to the Commitment to Guarantee Obligation closing and (2) submit satisfactory evidence of continuing United States citizenship on the date of Commitment to Guarantee Obligation closing, at all Guarantee closings and all Mortgage closings with pro forma evidence of citizenship to be submitted at least 10 days prior to the appropriate Commitment, Guarantee and/or Mortgage closing.

XXIII. Required the Shipowner, Polk, Cove, and GECC to submit satisfactory evidence of continuing United States citizenship at the guarantee closing.

XXIV. Required satisfactory evidence of Vessel insurance at least 10 days prior to the guarantee closing.

XXV. Required that any services performed by or for Queensway by or for an affiliated company be at a fair

and reasonable rate or approved by the Secretary as to fairness and reasonableness.

XXVI. Required that at least 5 days prior to the guarantee closing Queensway submit to the Secretary a financial statement certified by an officer of the company indicating all non-Title XI debt then in existence.

XXVII. Fixed the additional investigation fee authorized by Section 1104(f) of the Act at $39,193.75, less the $3,000 amendment fee previously paid, which amount must be paid within 30 days of the date of this action but in any event prior to the guarantee closing.

XXVIII. Required that the guarantee fee under the Second Mortgage and the insurance fee under the First Mortgage be fixed at ¾% until reduced by the Secretary based upon Queensway having secured a charter justifying the reduction.

XXIX. Authorized the Assistant Administrator for Maritime Aids to approve all appropriate documents and to take such other actions as may be necessary to effectuate the purposes of this action.

XXX. Required that all documentation be in form and substance satisfactory to the Secretary.

XXXI. Authorized the execution of this letter to Polk and Queensway which will constitute a Letter Commitment to Guarantee Obligations with respect to the sale of the Vessel and additional Title XI obligations, subject to the conditions contained herein, and required Polk and Queensway to accept the provisions hereof by signing and returning a copy to the Secretary.

Sincerely,

/s/ James S. Dawson, Jr.
JAMES S. DAWSON, JR.
Secretary

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. CA 77-1647

ALASKA BULK CARRIERS, INC.
Foot of Morton Avenue
Chester, Pennsylvania 19013
(Phone: 215/876-9121)

TRINIDAD CORPORATION
926 Public Ledger Building
6th & Chestnut Streets
Philadelphia, Pennsylvania 19106
(Phone: 215/574-3300)

v.

JUANITA M. KREPS, Secretary of Commerce,
U.S. Department of Commerce

MARITIME ADMINISTRATION,
U.S. Department of Commerce

MARITIME SUBSIDY BOARD,
U.S. Department of Commerce

ROBERT J. BLACKWELL, individually and as
Assistant Secretary of Commerce for Maritime Affairs,
Maritime Administrator and Chairman,
Maritime Subsidy Board, Maritime Administration
U.S. Department of Commerce

Street Address for all Defendants:

U.S. Department of Commerce
14th and E Streets, N.W.
Washington, D.C. 20235
United States of America

COMPLAINT FOR REVIEW OF AGENCY ACTION, DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Jurisdiction

1. This is a civil suit for judicial review of unlawful actions of the Maritime Administration/Maritime Subsidy Board (1) lifting statutory restrictions governing the operation of a vessel built with federal subsidy; and (2) awarding unauthorized financial ("loan") assistance amounting to 27.2 million dollars so as to permit the SS STUYVESANT to operate in U.S. *domestic* trades which are open only to U.S.-built ships constructed without federal subsidy assistance, although the ship was built with the assistance of federal subsidy funds to enable it to compete with foreign flag ships in U.S. *foreign* trades. The court has jurisdiction pursuant to 28 USCA §§ 1331, 1333, 1337, 1651, 2201-2202 and under 5 USCA §§ 701-706. Venue is proper pursuant to 28 USC § 1391.

Plaintiffs

2. Plaintiff Alaska Bulk Carriers, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business in Chester, Pennsylvania. Alaska Bulk Carriers is the bareboat charterer of two recently-constructed United States-flag oil tankers, the PRINCE WILLIAM SOUND and the GLACIER BAY (ex JOSEPH D. POTTS), which were not built with federal subsidy. It is also committed to a third recently-constructed unsubsidized United States-flag oil tanker.

3. Plaintiff Trinidad Corporation is a corporation organized and existing under the laws of Delaware. It is engaged in the operation of bulk tank vessels some of which were built without federal subsidy and are used in the transportation of oil from Alaska.

Defendants

4. Defendant Juanita M. Kreps is Secretary of Commerce ("Secretary") and as such is responsible for administering the Merchant Marine Act, 1936. Defendant Robert J. Blackwell is Assistant Secretary of Commerce for Maritime Affairs and as such is also Maritime Administrator of the defendant Maritime Administration, a constituent agency of the Department of Commerce, and *ex officio* member of the defendant Maritime Subsidy Board ("MSB"), a constituent agency of the Maritime Administration ("MarAD") both constituent agencies and the Administrator having been delegated by the said Secretary of Commerce under existing departmental orders to perform certain duties in administering the said Merchant Marine Act, 1936. Department of Commerce Organization Order 10-8 (formerly 117-A and 25-2A), as amended, Pike and Fischer, SR 105:101. All defendants are officially resident in Washington, D.C.

Statutes Involved

5. The statutes involved are:

(a) The Merchant Marine Act of 1936, as amended, 46 U.S.C. § 1101ff, particularly the provisions of Title V. This title authorizes, under certain conditions, the payment by the Government of construction-differential subsidy ("CDS") with respect to the construction of ships in United States shipyards for use in United States foreign commerce.

(b) 28 U.S.C. § 2201, § 2202 providing for declaratory judgment and injunctive relief;

(c) The provisions of the Administrative Procedure Act, 5 U.S.C. § 551ff and § 702 *et seq.*, particularly 5 U.S.C. § 704, providing for judicial review of Agency actions.

Domestic and Foreign Commerce

6. The domestic maritime commerce of the United States is the carriage by water of merchandise between points in the United States. Water carriage between U.S. and foreign points, or between foreign points only, is foreign commerce. By law (Section 27 of the Merchant Marine Act, 1920, 46 U.S.C. § 883, commonly known as the Jones Act), only ships built in the U.S. and documented under the laws of the U.S. (i.e., U.S.-flag vessels) may operate in domestic commerce. There are no such restrictions on vessels engaged in foreign commerce.

Construction Sudsidy Program

7. In the absence of construction-differential subsidy, vessels engaged in foreign commerce would ordinarily be built in foreign, not U.S., shipyards. The costs of building vessels in U.S. shipyards are substantially higher than in shipyards of other maritime nations. The government's construction-differential subsidy program was established to enable U.S. citizens building ships for use in foreign commerce to use U.S. shipyards and still remain economically competitive with foreign shipowners. When a shipowner builds a vessel under Title V of the Merchant Marine Act, 1936, the federal government pays up to 50% of the cost of such vessel to offset the higher costs of U.S. construction as compared with foreign construction. By contrast, an unsubsidized shipowner operating in domestic trade must bear the full cost of vessel construction in U.S. shipyards. Since low-cost foreign-built vessels may not engage in domestic trade, there is no need for payment of construction-differential subsidy with respect to the U.S.-built vessels which engage in such trade.

8. Under the Title V construction subsidy program, ships built for operation in the domestic trades are not eligible for subsidy and ships which have been built with

subsidy may not be operated in the domestic trade. Section 506 of the Merchant Marine Act, 1936, 46 U.S.C. § 1156, provides that the owner of any ship built with construction differential subsidy must agree that the vessel is to be operated exclusively in the foreign trade (except for certain intermediate stops at U.S. ports as part of foreign voyages and these exceptions are specifically enumerated in the statute). To meet emergencies or other special needs, the Secretary of Commerce has the discretion under Section 506 to permit CDS-built vessels to be *temporarily* transferred to the domestic trades for a short period (not exceeding six months in any year). Section 506 does not authorize—and does not empower the Secretary to authorize—either the transfer to the domestic trades of a CDS-built vessel for more than six months, or the permanent use of a CDS-built vessel in domestic trades.

9. There are only two situations wherein Section 506 permits a CDS-built vessel to be used in domestic trades —to make (1) incidental stops on a foreign voyage; (2) for a temporary period of 6 months or less. In those situations § 506 requires that a pro rata share of the construction subsidy be returned to the government. No statutory provision authorizes the Maritime Administration to remove the restrictions prohibiting the vessel's use in domestic commerce whether or not its action is conditioned on the payback of all unamortized construction subsidy.

10. Each grant of construction-differential subsidy generally involves the execution of three contracts: a construction contract between the shipowner and the shipyard, a contract between MarAd/MSB and the shipyard, and a contract between MarAd/MSB and the shipowner. The last contract incorporates numerous obligations of the shipowner in consideration of the CDS grant. The contractual commitment of the shipowner to

comply with the operating restrictions of Section 506 is set forth in a specific article in the contract. The contract provides that the provisions of the article incorporating the Section 506 restrictions "shall run with the title of the vessel and be binding on all owners thereof." A typical example of such an article from a tanker CDS contract (Article 9) is attached hereto as Exhibit A.

Title XI Guarantees

11. The Maritime Administration also promotes the U.S. shipbuilding industry and its merchant marine by providing guarantees which finance private borrowing at favorable interest rates. This program is authorized by Title XI of the Merchant Marine Act of 1936, as amended. The government insures obligations to pay ship construction costs for U.S. built and documented ships. Ordinarily, the agency takes a first preferred mortgage as security. Both subsidized and unsubsidized U.S. built ships may be insured—but while the agency may guarantee up to 87½% of the actual costs of construction of unsubsidized vessels, there are more stringent limits on its insuring obligations for subsidized ships.

The U.S.-Flag Tanker Industry

12. The U.S.-flag oil tanker industry consists of two physically and economically distinct fleets: (1) unsubsidized tankers operating in Jones Act (domestic) trades and (2) CDS-built tankers operating in foreign trades. Unsubsidized tankers generally cannot successfully compete against CDS-built—and foreign-built—tankers in foreign trades because of the higher costs of building ships in the U.S., and CDS-built tankers cannot lawfully operate in Jones Act trades, except in the limited circumstances permissible under Section 506.

13. Tanker rates (as reflected in charters and contracts of affreightment) in the Jones Act (domestic) trades are higher than the rates for U.S.-flag tankers of the same type in foreign trade since the rates of the unsubsidized Jones Act carriers do not reflect the subsidy assistance granted to U.S. tankers which compete with foreign tankers in foreign trades. Jones Act tanker rates are set in the marketplace by competition among unsubsidized U.S.-flag ships, and are generally sufficient to provide a fair return to the unsubsidized tanker owner and to stimulate the construction of new tonnage, as market forces dictate.

14. An important new market for Jones Act tankers was created in the early 1970's when plans were laid, and Congressional authority was secured, for construction of the Trans-Alaska Pipeline System ("TAPS") through which Alaskan oil will be transported from the North Slope of Alaska to the Southern Alaska port of Valdez. Oil tankers are to carry the oil from Alaska to various destinations in the "lower 48" states beginning in late summer/early fall of 1977 when the North Slope oil is expected to move through the TAPS pipeline for on-carriage to the lower 48. The market responded to these economic developments by the placing of orders for the construction of unsubsidized tankers which could operate in the TAPS trade. As a result of the unauthorized actions of the defendants, as described below, the owners and charterers of unsubsidized tankers to be used in the TAPS trade are faced with imminent illegal and unfair competition from the CDS-built tanker fleet.

SS STUYVESANT

15. Seatrain Shipbuilding Corporation (Seatrain) of Brooklyn, New York is a shipyard building liquid bulk vessels. It is the recipient of construction differential subsidy amounting to approximately $27.2 million paid by MarAd/MSB for the construction of the SS STUYVESANT, a 225,000-dwt tanker under Construction Dif-

ferential Subsidy Contract No. MA/MSB-164 with the United States. The vessel is the subject of a Title V (subsidy) Contract No. MA/MSB-165 between MarAd/MSB and the owner, Polk Tanker Corporation (Polk) as the owner or prospective owner which contract includes the restrictions of Section 506 of the Merchant Marine Act, 1936, as amended, prohibiting the vessel's permanent operation in U.S. domestic trades. Additionally, the SS STUYVESANT was financed in 1972 with the payment of approximately $30.2 million of the debt insured by the United States Government through MarAd/MSB under Title XI of the Merchant Marine Act, 1936.

16. In addition to the Assistance given Seatrain by MarAd/MSB for the SS STUYVESANT, including (1) construction differential subsidy of upwards of 27.2 million paid by MarAd/MSB to Seatrain to meet costs of constructing the SS STUYVESANT and (2) the $30.2 million debt guarantee made by MarAd to secure financing for the vessel, the Department of Commerce has provided further financial assistance to aid the SS STUYVESANT. In June, 1975, the Economic Development Administration guaranteed loans in the amount of $77 million so that Seatrain and Polk could overcome financial difficulties which had led to the closing of Seatrain's yard. With this loan, Seatrain reopened its yard and completed the STUYVESANT; on information and belief, the loan guarantee was collateralized by pledges and security derived from the expected value of the SS STUYVESANT on completion. On information and belief, MarAd and EDA valued this collateral based upon the expected use of the vessel in the Alaska trade—despite the fact that the law forbids the operation of a vessel built with CDS in domestic trades.

17. On information and belief Seatrain Lines, Inc. (the parent company of the shipyard and the shipowner) made the decision to build the SS STUYVESANT and

commenced its construction "on speculation." That is, the shipowner, Polk, did not have a long-term charter (or any charter, for that matter) in hand during the lengthy construction period when construction began. Polk and Polk's parent were thus "speculating" that an appropriate charter for use of the vessel in foreign commerce would materialize.

18. Despite the lack of a charter or charters, the shipowner in 1972 or earlier applied for and received the federal maritime aids described in paragraph 18, above (over $27 million in an outright subsidy grant and over $30 million in Title XI guarantees). Title XI at § 1104 (d), and Title V at § 501, each require that the agency make a finding that the project for which the aid is given is economically sound and viable. On information and belief, MarAd/MSB has never granted aid even closely approximating the magnitude of aid granted to Seatrain and Polk without requiring, in order to make the statutory finding, that the shipowner have a long-term charter insuring that the vessel will be employed profitably in lawful trade and will generate sufficient funds to service the U.S.-guaranteed debt and to justify the grant of subsidy.

19. On information and belief, MarAd/MSB and the shipowner/shipyard interests gravely miscalculated the likelihood that a profitable charter for the use of the SS STUYVESANT in non-domestic trade would materialize, for no such charter has materialized.

20. By 1974, international tanker rates had declined precipitously from levels which had been reached just prior to the Arab oil embargo in 1973, thus further reducing the likelihood that a profitable non-domestic charter for the STUYVESANT would even be executed.

21. In June 1975, despite depressed market conditions and the lack of a charter, the Department of Commerce,

through its Economic Development Administration, guaranteed massive additional loans to Seatrain (as alleged in paragraph 19), the partial collateral for which consisted, on information and belief, of a $38.5 million security interest in the vessel in favor of the United States.

22. In early 1975, prior to the issuance of $77 million in U.S. guarantees in 1975 for the benefit of Seatrain, officials representing the EDA, MarAd/MSB and Seatrain corporate interests met and discussed the eventual use of the vessel in the Alaska trade despite the vessel's CDS status, and, on information and belief, the government officials assured Seatrain that the agency or agencies could accomplish certain official acts purportedly enabling Seatrain or successor interests to operate the vessel in the Alaska domestic market. Those official acts have indeed taken place and are the acts complained of herein.

23. At the time of the discussion alleged in the preceding paragraph and up to the date of the actions complained of herein (August 31, 1977), neither MarAd/MSB nor EDA had ever given any notice to the public, and to the domestic tanker industry and plaintiffs in particular, that there even existed a possibility that MarAd/MSB, EDA, and Seatrain interests would seek to have the vessel employed in the Alaska trade and to have the CDS contract cancelled fully.

24. During the period of the government's and Seatrain's public silence, both shipyards and shipowners in the domestic tanker industry, including plaintiffs herein, expended massive funds (without aid of federal sudsidy) to build and buy ships based on projected rates and projected total capacity which did not—and could not—include the competition of the SS STUYVESANT (as well as its sister vessel the SS BAY RIDGE).

Maritime Administration/Maritime Subsidy Board Actions

25. On July 20, 1977, MarAd/MSB published in the Federal Register notice of a request for approval of the operation of the SS STUYVESANT in the Alaska trade for a period of three years. This request had been made by Polk Tanker Corporation and Seatrain Shipbuilding Corporation. The Seatrain-Polk application asked for the approval of a three-year time charter to Standard Oil Company (Sohio), an Ohio corporation. Publication of the request was made pursuant to agency regulations, 46 CFR § 250.1-250.6, setting out procedures for the agency's considering requests for participation of vessels built with the CDS in the carriage of Alaskan oil. Section 250.5 of these regulations repeats the statutory restriction that MarAd/MSB cannot approve "an application where the result would be to allow a vessel of the applicant to participate in the trade for a period exceeding six months in any consecutive 12-month period." The Seatrain-Polk request was made an official MarAd/MSB proceeding entitled Docket S-565.

26. Plaintiffs and other unsubsidized carriers filed timely comments opposing the Seatrain-Polk request.

27. On information and belief, after receiving comments in Docket S-565, MarAd/MSB held private exparte meeting(s) with representatives of Seatrain/Polk/Queensway discussing Seatrain-Polk's application. As a result of such discussion(s), Polk Tanker Corporation changed the terms of its request to the Maritime Administration. In a letter dated August 25, 1977, Polk proposed that it be released from the restrictions of its subsidy contract Ma/MSB-165, including the restriction against operation in the Alaska (domestic) trade, upon its execution of a twenty-year promissory note payable in 40 semi-annual installments for the amount of the construction differential subsidy and national defense fea-

tures paid for by the government under CDS Contract No. MA/MSB-164. Polk proposed various financing measures. This letter did not include any request for approval of a charter.

28. By separate letter dated August 26, 1977, Polk Tanker Corporation withdrew the application filed on July 8, 1977.

29. MarAd/MSB did not publish notice of the Polk Tanker Corporation application described in Polk's August 25, 1977 letter in the Federal Register, nor did the agency otherwise follow the procedures set forth in 46 CFR 250-1 *et seq.* Instead, on August 30, 1977 MarAd/MSB took a series of actions approving Polk's August 25, 1977 proposal.

30. These actions are described in two letters, each dated August 31, 1977, to Polk Tanker Corporation and Queensway Tankers, Inc. from Secretary James S. Dawson, Jr., attached as Exhibit B. One letter describes the actions taken by the Maritime Subsidy Board/Assistant Secretary of Commerce for Maritime Affairs with respect to (1) approving the so-called "subsidy repayment" which is not in fact a repayment of subsidy but merely the issuance of a promissory note to be paid over twenty years, and (2) amending the subsidy contract with Polk to release the vessel from restrictions. The second letter describes actions taken by the Assistant Secretary with respect to the Title XI debt financing guarantees.

31. Under the terms of the arrangement with Seatrain/Polk MarAd will get a first and second preferred mortgage on the SS STUYVESANT to secure the obligations guaranteed under Title XI of the Act. MarAd will get a third preferred mortgage on the SS STUYVESANT to secure the note promising subsidy repayments. This note is also secured by the charters for the SS STUYVESANT's operation in the Alaska trade.

MarAd is also getting a preferred security interest in the BAYRIDGE, another vessel under construction by Seatrain. MarAd/MSB's actions are summarized in a press release dated September 1, 1977 a copy of which is attached as Exhibit C. The press release explains that the agency is attempting to secure the use of the SS STUYVESANT in the Alaska trade in order to protect its own interests.

32. The net effect of the action taken by MarAd/MSB in accepting a promissory note in lieu of actual repayment of subsidy is to make an outright loan of the amount of the construction differential subsidy originally paid to Seatrain.

33. On information and belief, MarAd/MSB will be making similar arrangements to lift restrictions on the SS BAY RIDGE, another Seatrain-built vessel.

34. There was considerable ferment within the merchant marine industry after it learned of the aforesaid actions of MarAd/MSB, and a meeting of the Independent Tankers Owners Committee specifically to discuss these actions was scheduled for Thursday, September 8, 1977. At or before this meeting, communications were made by the Maritime Administrator to some or all of the persons attending the Independent Tanker Owners Committee that the decisions taken by MarAd/MSB in respect of the SS STUYVESANT, were for the good of the merchant marine industry and that, in consideration for a promise by some or all of the protestants in S-565 and/or other persons with similar interests not to appeal these decisions to a court and not to seek review of them by the Secretary of Commerce, the Maritime Administrator would agree to "shut the door" behind the SS STUYVESANT and the BAY RIDGE by enacting regulations designed for that purpose, such regulations to be drafted by the Independent Tankers Owners Committee. Counsel for the Independent Tankers Owners Committee did draft

such regulations and they were circulated to members of the aforementioned industry and/or their counsel on Monday, September 12, 1977. A copy of said regulations is attached hereto as Exhibit D. Upon information and belief, when Shell Oil Company filed its petition seeking a discretionary review by the Secretary of Commerce of the MarAd/MSB actions on September 12, 1977, the suggested "deal" became inoperative.

MarAd/MSB Actions are Unlawful

35. The actions taken by MarAd/MSB approving the Seatrain/Polk proposal are wholly unauthorized and beyond its powers in that the agency:

(a) lacks authority to release the vessel owner from the statutory restrictions of section 506 barring operation of a vessel built with CDS in domestic trades;

(b) lacks authority to accept the repayment of construction differential subsidy in full so as to "cleanse" the vessel of statutory restrictions governing vessels built with the subsidy;

(c) lacks authority to make a loan either for construction of a vessel or for repayment of construction differential subsidy. The actions are also unlawful in that they were taken in violation of the agency's regulations, 46 CFR Part 250, and contrary to standards of due process.

36. There are no provisions of the Merchant Marine Act, 1936 or any other statute which permit the agency to take these extraordinary actions and MarAd/MSB letters of August 31, 1977 fail to state any basis for the actions. In Docket S-565, Seatrain/Polk argued that Section 207 of the Merchant Marine Act, 1936 permitted the agency to lift restrictions against operating in the Alaska trade for a three-year period. But Section 207 is a housekeeping provision which merely authorizes the agency to

enter into contracts or make disbursements to protect, preserve or improve the government's collateral in the same manner as a private corporation and does not authorize the lifting of statutory restrictions against using CDS-built vessels in domestic trades or the making of loans to finance construction or subsidy repayment.

37. On information and belief, the agency may be relying, in whole or in part, on Section 1104(a) of the Merchant Marine Act, 1936 dealing with guarantees under Title XI. Section 1104(a) lists the permissible purposes of obligations which the agency may *guarantee.* One such purpose is "financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act. . . ." This section contains no authorization to make loans, or approve the permanent transfer of a CDS-built vessel to domestic trades, or to accept subsidy repayments. There are no statutory provisions of the Act permitting MarAd to make loans for building ships or repaying subsidy. The only provision of the Merchant Marine Act, 1936, or any statute, authorizing the agency to accept repayment of construction differential subsidy with the concomitant lifting of restrictions against operating in domestic trades is Section 506 which provides for lifting restrictions and partial pro rata repayment of subsidy in two carefully defined situations, i.e., (a) a temporary transfer of six months or less, or (b) incidental stops at domestic ports as part of a round-the-world voyage.

Agency's Actions Contradict Statutory Policies

38. Not only are the agency's actions statutorily unauthorized, but they are also contrary to the objectives of the construction subsidy program. The program is designed to promote the building of ships to be used in foreign commerce in U.S. shipyards. Since ships used in

domestic trades are required by law to be built in U.S. shipyards, there is no need for the government to pay subsidies. To permit a CDS built vessel to be used in either domestic trades or foreign trades (simply by repaying subsidies) discourages the building of unsubsidized vessels. The building of a ship without subsidy involves a much greater economic risk than building with subsidy where as much as 50% of the costs of construction are paid by MarAd. If it is possible to use a subsidized vessel in domestic trades, domestic operators will not wish to build unsubsidized ships.

39. The building of unsubsidized vessels for domestic trades, particularly the Alaskan tanker trade, is discouraged by the prospect that any perceived short-fall in the supply of unsubsidized vessels can be met by the use of vessels built with construction-differential subsidy. The ship building industry has experienced severe inflation. Since presently existing subsidized ships were built when construction costs and interest costs were lower than at present, the base cost of these subsidized vessels would be lower than the cost of new unsubsidized vessels, even if unamortized subsidy is repaid. Prospective purchasers of new vessels for domestic trades are reluctant to place orders for the construction of such vessels since they face the prospect of competing against CDS-built vessels which cost less even with subsidy to be repaid. Using a CDS-built ship is even more attractive if, as in the case of the SS STUYVESANT MarAd finances the subsidy repayment over a 20-year period.

40. The permanent transfer of even one or two CDS-built vessels has a spiraling effect. If domestic operators do not place orders for new unsubsidized ships fearing CDS competition, then there will be a future shortage of ships for use in the domestic trades. This future shortage will lead to the permanent transfer of additional CDS vessels to service the domestic trades which in turn

will further discourage the building of unsubsidized ships for the domestic trades with the result that only subsidized vessels are built in U.S. shipyards. This will place an unnecessary burden on the subsidy program and the U.S. taxpayer.

Unlawful Agency Action Harms Plaintiffs

41. Shipowners who have paid the full cost of U.S.-built tankers and have not received federal subsidy are subject to unfair and unlawful competition from the SS STUYVESANT, and from other CDS-built vessels with respect to which vessels the agency may likewise lift operating restrictions if this action is permitted to stand. Plaintiffs who made the economic decision to invest in ships built in U.S. shipyards without subsidy, relying on a market for the ships to be used in domestic trades, will forever be subject to competition from these vessels. Unsubsidized U.S.-built tankers cannot compete on an even footing with foreign-built and CDS-built tankers in foreign trades. They are at a disadvantage in competing in the domestic trade with CDS-built tankers owners—particularly if, as is in the case of the SS STUYVESANT, the government has made an outright loan of the amount of the subsidy and is permitting repayment over a 20-year period.

42. MarAd/MSB's action creates severe economic hardships disrupting the market for unsubsidized U.S.-built vessels. The fact that the SS STUYVESANT has been "cleansed" of subsidy and will operate permanently in the Alaska and other domestic trades, and that similar action will be taken to release the SS BAY RIDGE, raises uncertainty about whether, and under what circumstances, other CDS-built vessels will be cleansed and transferred to the domestic fleet. Since there are about as many CDS-built tankers as there are unsubsidized tankers, the prospect is that the domestic fleet could be

doubled. With the statutorily established guidelines overturned by MarAd/MSB actions to release the SS STUYVESANT, it is not possible to anticipate what will happen. Thus, the market cannot function. Oil companies which would purchase tanker space for the Alaskan oil trade will be unwilling to presently contract for existing tanker tonnage built without subsidy at rates which reflect the costs of building unsubsidized ships and the supply of unsubsidized ships anticipating that the supply of vessels available for use in domestic trades will increase as CDS-built vessels enter the market. (CDS-built vessels will be available at lower rates because they were constructed with subsidy.) This means that the unsubsidized owners and operators face difficulties in meeting financing obligations incurred to own and/or operate unsubsidized ships in domestic trades. It also means that plans to add additional vessels in domestic trades have become problematical—as has the financing for such vessels.

Relief Requested

WHEREFORE, Plaintiffs respectfully request that this court issue an order

(1) permanently enjoining the agency from taking any steps to carry out the actions set forth in two letters each dated August 31, 1977 from MarAd/MSB, to Polk Tanker Company and Queensway Tankers, Inc. and declaring all such actions null and void.

(2) declaring that the Secretary of Commerce, the Maritime Administration and the Maritime Subsidy Board lack authority to waive the restrictions of Section 506 of the Merchant Marine Act, 1936 so as to permit the operation of vessels built with construction differential subsidy in domestic commerce either on condition of repayment of unamortized subsidy or otherwise (except on a temporary basis for less than six months in any year).

(3) permanently enjoining the Secretary of Commerce the Maritime Administration and the Maritime Subsidy Board from amending any construction-differential subsidy contracts or taking any other action to lift the restrictions of Section 506 of the Merchant Marine Act, 1936 permitting the operation of vessels built with construction-differential subsidy in domestic commerce either on condition of repayment of unamortized subsidy or otherwise (except on a temporary basis for less than six months in any year);

(4) granting such other relief as the court may deem appropriate.

Respectfully submitted,

ALAN G. CHOATE
PEPPER, HAMILTON & SCHEETZ
123 South Broad Street
Philadelphia, Pennsylvania 19109
Tel. (215) 545-1234

AMY LOESERMAN KLEIN
OLGA BOIKESS
WILLIAM KARAS
THOMAS A. JOHNSON
GALLAND, KHARASCH, CALKINS & SHORT
1054 Thirty-first Street, N.W.
Washington, D.C. 20007
Tel. (202) 333-2200

Attorneys for
ALASKA BULK CARRIERS, INC.
TRINIDAD CORPORATION

September 22, 1977

EXHIBIT A

ARTICLE 9. *DOCUMENTATION AND OPERATION OF THE VESSELS*

(a) The Vessel shall remain documented under the laws of the United States for not less than twenty (20) years from the date of delivery of each of the Vessels by the Contractor to the Purchaser or so long as there is outstanding a preferred ship mortgage from the Purchaser insured under Title XI of the Act, whichever is the longer period, subject however, to the provisions of section 611 of the Act.

(b) (i) Purchaser hereby agrees, in accordance with section 506 of the Act, that the Vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the West Coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic Coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the Vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and that if the Vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Board that proportion of one-twentieth of the construction-differential subsidy paid for such Vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year; and (ii) Purchaser agrees to comply in all other respects with Section 506 of the Act.

(c) The Purchaser agrees that for the twenty-year economic life of the Vessel that the Vessel shall be operated in the foreign commerce of the United States pursuant to Section 905(a) of the Act and the regulations issued thereunder consistent with such section.

(d) The foregoing provisions of this Article shall run with the title to the Vessel and be binding on all Owners thereof.

ARTICLE 10. *NATIONAL DEFENSE FEATURES*

(a) The Purchaser agrees that, for the purposes of paragraphs (b) and (c) below, the foreign cost of the National Defense Features incorporated into the Vessel shall be as follows

(1) Feature	(2) Cost of Feature	(3) Foreign Cost of Feature
Fueling at Sea	$70,000	$41,349
Highline Transfer	4,000	2,363
Prohibition of Gray Cast Iron	77,000	45,484

provided that in the event the cost of National Defense Features is increased or decreased by reason of a change or changes, the foreign cost of National Defense Features will be adjusted accordingly.

[SEAL]

EXHIBIT B-1

UNITED STATES DEPARTMENT OF COMMERCE

Maritime Administration
Washington, D.C. 20230

August 31, 1977

Polk Tanker Corporation
One Chase Manhattan Plaza
New York, New York 10005

Gentlemen:

For over two years the Maritime Administration has been considering the possibility that at the time of delivery there might be no market for the STUYVESANT other than the movement of Alaskan oil to the lower 48 states. The Economic Development Agency in June 1975 agreed to guarantee additional funding to Seatrain Shipbuilding Corporation to reopen its yard to complete this vessel taking into account the same possibility. In light of the fact that several years of work and negotiations have generated no other opportunities for employment of this vessel, and being persuaded that approval of the proposed CDS repayment and the time charter of the Sohio Petroleum Company will improve the collateral position and prevent possible default on various obligations insured and guaranteed by the Department of Commerce, and failure to approve the proposal would jeopardize continued operation of the Seatrain Shipbuilding Corporation, the Maritime Subsidy Board (Board)/Assistant Secretary of Commerce for Maritime Affairs (Assistant Secretary) with respect to the requests dated July 12, 1977 and August 25, 1977, from Polk Tanker Corporation (Polk) pertaining to the T. T. STUYVESANT, took the following actions on August 30, 1977:

I. By the Assistant Secretary:

A. Approved, pursuant to sections 9, 37 and 41 of the Shipping Act, 1916, as amended (the Shipping Act), the time charter by United States Trust Company of New York, as owner trustee, and Queensway Tankers, Inc., as charter owner, of the tanker Builder's Hull No. 102 (to be documented under U.S. flag and named STUYVESANT), to Sohio Petroleum Company, a Delaware corporation but not a citizen of the United States within the meaning of section 2 of the Shipping Act, for a period of three (3) years commencing on or about the date of Maritime Administration approval, for the carriage of crude oil and/or dirty petroleum products in permissible worldwide trade, upon the conditions: (1) that without the prior written approval of the Maritime Administration the vessel shall not be subchartered to aliens, except as may be permitted by General Order 59, 2d Revision, as amended; and (2) that the operating range of said vessel shall not include the Soviet Union, Latvia, Lithuania, Estonia, Czechoslovakia, Hungary, Bulgaria, Albania, North Korea, the Soviet Zone of Germany, Manchuria, the People's Republic of China, Cambodia, North Vietnam, South Vietnam, Cuba or Southern Rhodesia, unless otherwise permitted by regulations of the Department of Commerce.

II. By the Board:

A. Found, pursuant to section 501(a) of the Merchant Marine Act, 1936, as amended (the Act), that United States Trust Company, as owner trustee and Queensway Tankers, Inc., as charter owner, are acceptable transferees of the T. T. STUYVESANT, subject to both companies demonstrating their U.S. citizenship, under section 2 of the Shipping Act, to the satisfaction of the General Counsel.

B. Approved, pursuant to Article 14 of Board Contract No. MA/MSB-165, the assignment of the T. T. STUYVESANT to United States Trust Company as owner trustee and the bareboat charter of the vessel to Queensway Tankers, Inc.

C. Authorized the repayment to the United States on the date of delivery of the T. T. STUYVESANT, of the total amount of construction-differential subsidy paid in connection with the construction of the vessel, including the cost of National Defense Features, as determined by the Maritime Administration, in the form of a promissory note issued by Polk and to be assumed by the United States Trust Company as trustee upon purchase of the vessel, payable in level installments of principal and interest, semi-annually in arrears for twenty years beginning on the date of delivery of the vessel, provided that:

(1) The note is secured by a preferred ship mortgage on the vessel to be given by the owner trustee in favor of the United States which will be subject and subordinate to a first preferred mortgage and second preferred mortgage to be given by the owner trustee to secure obligations insured and/or guaranteed under Title XI of the Act, in connection with financing the vessel.

(2) The note is also secured by the owner trustee's interest in (a) the bareboat charter; (b) the time charter; and (c) the Seatrain Security Agreement.

(3) All documents related to the repayment of CDS have been found to be satisfactory, in form and substance, to the Office of the General Counsel.

D. Determined that interest is payable on the promissory note authorized in paragraph C above, with

interest theron to be at the same rate borne by the second tier of Title XI debt from date of execution.

E. Authorized the amendment of Board Contract No. MA/MSB-165 to release the vessel owner from all restrictions, obligations and duties contained therein, except those contained in Articles 4 and 11 pertaining to the right of the Board to the engineering and design data for the vessel, and the purchase and requisition rights of the United States to the vessel pursuant to section 802 of the Act, respectively. It shall be understood that with respect to the compensation formula contained in Article 11, the amounts of CDS repaid pursuant to paragraph C above, shall be considered in the calculation of compensation.

F. Authorized the Assistant Secretary of Commerce for Maritime Affairs (the Secretary), on behalf of the Board, to accept or enter into the following documents:

1. Promissory Note from Polk;

2. Novation Agreement among United States Trust Company as owner trustee, Polk and the Secretary;

3. Security Agreement between United States Trust Company as owner trustee and the Secretary; and

4. Preferred Ship Mortgage (Third) between United States Trust Company as owner trustee and the Secretary

in substantially the form submitted, proof date August 25, 1977, or with such changes as the Secretary shall approve and delegated to the Assistant Administrator for Maritime Aids authority to take all

actions necessary in connection with the administration of the above mentioned documents.

Your attention is invited to the provisions of Department of Commerce Organization Order 10-8, section 7, and we ask that you indicate your acceptance of the above actions by signing, dating, and returning the enclosed copy of this letter.

Sincerely,

/s/ James S. Dawson, Jr.
JAMES S. DAWSON, JR.
Secretary

Enclosure

[SEAL]

EXHIBIT B-2

UNITED STATES DEPARTMENT OF COMMERCE

Maritime Administration
Washington, D.C. 20230

August 31, 1977

Polk Tanker Company
One Chase Manhattan Plaza
New York, New York 10005

Queensway Tankers, Inc.
110 Wall Street
New York, New York 10005

Gentlemen:

With respect to the proposed sale of the STUYVESANT (Vessel) by Polk Tanker Corporation (Polk) to The United States Trust Company of New York (Shipowner), not in its individual capacity but solely as owner trustee under a Trust Agreement between it and General Electric Credit Corporation (GECC), and the proposed additional bond sale, you are advised that on August 30, 1977, the Assistant Secretary for Maritime Affairs (Secretary) took the following actions:

I. Approved the Shipowner, not in its individual capacity but solely as owner trustee under a Trust Agreement between it and GECC, as lessor under the lease financing arrangement.

II. Found that Cove Shipping, Inc. (Cove) possesses the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the Vessel.

III. Approved Queensway Tankers, Inc. (Queensway) as bareboat charterer and, found pursuant to Section 1104 (b)(1) of the Merchant Marine Act, 1936, as amended (Act), subject to compliance with the requirements herein

stated, and the execution of the Management Agreement required below, that Queensway and the Shipowner possess the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the Vessel.

IV. Approved the proposed sale and lease financing arrangement, whereby Polk will assign its rights and obligations under the construction contract for the Vessel to the Shipowner, pursuant to Section 8.01 of the Trust Indenture.

V. Required that the lease terms of the sale and lease proposal be subject to approval by the Maritime Administration including, but not limited to, the lease rate, indemnification, etc.

VI. Found under Section 1104(d) of the Act that the property or project with respect to which the additional guaranteed obligations will be issued remains, in his opinion, economically sound.

VII. Determined, pursuant to Sections 1101(f) and 1104 (b)(2) of the Act, that the final actual cost of construction of the Vessel is as follows:

Construction Costs	$70,180,428
Net Interest	5,372,679
Total Actual Cost	$75,553,107

On this basis fixed the guarantee amount of $60,200,000, which amount does not exceed 87½% of the actual cost of the Vessel.

VIII. Found that on the basis of the repayment of construction-differential subsidy (CDS) the Vessel is eligible for a guarantee in an amount not to exceed 87½% of the actual cost of construction of the Vessel.

IX. Approved the amortization of the proposed additional obligations ($31,355,000) on a twenty year level debt service basis (equal payments of principal and interest).

X. Required Queensway to execute a Management Agreement with Cove and required that said Management Agreement be approved in form and substance by the Secretary.

XI. Required that at or prior to the guarantee closing the Economic Development Administration (EDA) subordinate its preferred position on the BAY RIDGE, presently being constructed at Seatrain, in favor of the Maritime Administration.

XII. Required that Chase Manhattan Bank, N.A., (Chase) agree to subordinate their position on the BAY RIDGE to the Maritime Administration and to EDA up to $40,000,000 even should the Letters of Credit issued by Chase for use with respect to the BAY RIDGE be drawn down.

XIII. Required that Queensway execute a Title XI Reserve Fund and Financial Agreement (Financial Agreement) in the form of our standard Financial Agreement dated December 1, 1974.

XIV. Required that Queensway deposit 100% of its profits into the Reserve Fund until it has accumulated an amount in the Reserve Fund and Seatrain Security Fund equal to 50% of the outstanding principal balance of the First and Second Mortgage.

XV. Required that for purposes of Section 12 (negative covenants) of the Financial Agreement the working capital and net worth requirements be set at $11,027,700 for both.

XVI. Required that at or prior to the guarantee closing, the Shipowner have funds available equal to the difference between the outstanding indebtedness on the Vessel and the capitalizable cost of the Vessel (approximately $32.7 million).

XVII. Required that at the guarantee closing Queensway have working capital sufficient to supply the Vessel on its

initial voyage, obtain the necessary marine insurance, and pay the Title XI guarantee and insurance fees and that an officer of Queensway certify that Queensway has this amount.

XVIII. Required that for purposes of meeting the working capital requirement of Section 12 of the Financial Agreement, 50% of the amounts in the Reserve Fund will be counted towards working capital so long as the 100% deposit of profits requirement is in effect.

XIX. Required that Seatrain establish a Seatrain Security Fund and deposit into this fund from the escrowed equity investment of GECC plus its earnings any amounts in excess of those required to protect GECC.

XX. Determined that Seatrain will not have to make deposits into the Seatrain Security Fund if the amount on deposit in the Security Fund plus the amount in the Reserve Fund equals 50% of the outstanding indebtedness (relating to the First, Second, and Third Mortgages) related to the Vessel.

XXI. Considered the release of the Seatrain Security Fund to Seatrain if any of the following conditions are met:

(A) If Queensway should secure a time charter or contract of affreightment to an acceptable credit risk, as determined by the Secretary, equal to at least 1/2 of the remaining original term of the bareboat charter wherein (1) the charter hire is sufficient to service the bareboat charter hire and is paid on a hell-and-highwater basis, (2) the operating component of the charter hire is sufficient for all operating expenses, and (3) there is a reasonable profit to Queensway.

(B) If Queensway should secure a time charter or contract of affreightment meeting all the conditions in (A) above except that it was not for 1/2 of the remaining

original term of the bareboat charter, and if this time charter or contract afreightment plus the amount in Queensway's Reserve Fund assured the payout of at least 50% of the outstanding indebtedness of the Vessel at the end of the charter period.

(C) If the Vessel is sold to a buyer possessing acceptable substantial credit as determined by the Secretary.

(D) If Queensway were to merge into a company that has sufficient assets and credit, as determined by the Secretary, to service the bareboat charter hire.

(E) The presence of any other conditions or circumstances as determined by the Secretary which would give the Maritime Administration security in an amount at least equal to any of the four above stated conditions.

XXII. Required Queensway to (1) establish United States citizenship in form and manner prescribed in 46 CFR 355 within 30 days after date of this Commitment or this Commitment may be terminated by the Secretary at his sole discretion; provided, however, if a Commitment to Guarantee Obligation closing is scheduled to occur within said 30 day period, required such parties to establish United States citizenship at least 15 days prior to the Commitment to Guarantee Obligation closing and (2) submit satisfactory evidence of continuing United States citizenship on the date of Commitment to Guarantee Obligation closing, at all Guarantee closings and all Mortgage closings with pro forma evidence of citizenship to be submitted at least 10 days prior to the appropriate Commitment, Guarantee and/or Mortgage closing.

XXIII. Required the Shipowner, Polk, Cove, and GECC to submit satisfactory evidence of continuing United States citizenship at the guarantee closing.

XXIV. Required satisfactory evidence of Vessel insurance at least 10 days prior to the guarantee closing.

XXV. Required that any services performed by or for Queensway by or for an affiliated company be at a fair

and reasonable rate or approved by the Secretary as to fairness and reasonableness.

XXVI. Required that at least 5 days prior to the guarantee closing Queensway submit to the Secretary a financial statement certified by an officer of the company indicating all non-Title XI debt then in existence.

XXVII. Fixed the additional investigation fee authorized by Section 1104(f) of the Act at $39,193.75, less the $3,000 amendment fee previously paid, which amount must be paid within 30 days of the date of this action but in any event prior to the guarantee closing.

XXVIII. Required that the guarantee fee under the Second Mortgage and the insurance fee under the First Mortgage be fixed at 3/4% until reduced by the Secretary based upon Queensway having secured a charter justifying the reduction.

XXIX. Authorized the Assistant Administrator for Maritime Aids to approve all appropriate documents and to take such other actions as may be necessary to effectuate the purposes of this action.

XXX. Required that all documentation be in form and substance satisfactory to the Secretary.

XXXI. Authorized the execution of this letter to Polk and Queensway which will constitute a Letter Commitment to Guarantee Obligations with respect to the sale of the Vessel and additional Title XI obligations, subject to the conditions contained herein, and required Polk and Queensway to accept the provisions hereof by signing and returning a copy to the Secretary.

Sincerely,

/s/ James S. Dawson, Jr.
JAMES S. DAWSON, JR.
Secretary

EXHIBIT C

U.S. DEPARTMENT OF COMMERCE

Maritime Administration

September 1, 1977
Page 1 of 3

B77-506

The Assistant Secretary and the Maritime Subsidy Board have taken several actions to permit the use of the SS STUYVESANT, a 225,000-dwt tanker built with construction-differential subsidy, in permissible worldwide trade.

The actions clear the way for the tanker's owners to charter it to Sohio Petroleum Company for a 3-year period for the Alaskan oil trade. The Maritime Administration has for 2 years been considering the possibility that upon delivery there might be no market for the STUYVESANT other than the Alaskan oil trade. Several years of negotiations have generated no other employment opportunities for the vessel. In June 1975 the Economic Development Administration guaranteed loans in the amount of $77 million to permit Seatrain Shipbuilding Corporation, N.Y., N.Y., to reopen its yard to complete the STUYVESANT.

Approval of the proposal by the ship's owners, Polk Tanker Corporation, to repay the entire amount of CDS and to time charter the vessel to the Sohio subsidiary will improve the collateral position and prevent possible default on various obligations insured and guaranteed by the Department of Commerce. Failure to do so would jeopardize the continued operation of Seatrain Shipbuilding Corporation. In light of these considerations, the Board and the Assistant Secretary took the following actions on August 30, 1977.

The Board approved the transfer of ownership from Polk to United States Trust Company, which will bareboat charter it to Queensway Tankers, Inc., which will then time charter it to Sohio Petroleum. Polk will issue a promissory note—which U.S. Trust will assume—payable to the United States Government in the amount of $27.2 million. The note represents the aggregate amount of CDS and the cost of National Defense Features paid by the U.S. to Seatrain. The note will be payable for 20 years in 40 level semi-annual installments of principal and interests. The note will be secured by a third preferred ship mortgage, subordinate to the first and second preferred mortgages to be given by U.S. Trust to insure Title XI obligations issued to finance the vessel. The note will also be secured by U.S. Trust's interest in the bareboat charter and the Seatrain Security Agreement. Interest on the promissory note will be at the same rate as the second tier of Title XI debt.

The vessel may not be subchartered to aliens without prior written permission from MarAd, and it may not trade in specified Communist countries or in Southern Rhodesia.

The CDS contract will be amended to release the vessel from all restrictions, obligations, and duties, except those concerning the right of the Board to the engineering and design data for the vessel and the Board's purchase and requisition rights.

The STUYVESANT is one of three 225,000-dwt tankers which Seatrain has built with CDS. Polk, a Seatrain affiliate, applied on July 12, 1977, for approval of the 3-year charter and prorated CDS payback. It later withdrew that application and requested permission to repay the entire amount of CDS and to release the vessel from its CDS contract restrictions.

Exhibit D

The Maritime Administration has recently approved an application by the owner of a vessel built with construction-differential subsidy under Title V, Merchant Marine Act, 1936, as amended, to repay such subsidy in order to remove the vessel's statutory disability to engage in coastwise service.

On September 12, 1977, the American Maritime Association and the Independent Tanker Owners Committee filed a petition for issuance of a rule setting forth the principles on which the aforesaid action was based and prescribing their future applicability. The Maritime Administration hereby grants the petition and, subject to due consideration of comments that may be submitted, is disposed to adopt an appropriate rule in the terms appearing below.

The considerations supporting the rule are two-fold:

First. Construction-differential subsidy is awarded under Title V when the particular vessel is found to be needed to meet the requirements of, and to aid in promoting, the foreign commerce of the United States. The applicant will have warranted that he is, and will have been found, qualified in respect of ability, experience and financial resources necessary for the operation; and where Title XI is involved, as is usual, the operation will have been warranted and determined to be economically sound. These judgments contemplate cyclical market downturns, which even when severe would not ordinarily be deemed to create conditions negating such findings and determinations. Subsidized operations would therefore be expected to maintain their status in foreign trade pending cyclical improvements, especially (but not exclusively) where the vessel is under term charter to substantial charterers. To allow repayment of subsidy in other than limited and exceptional circumstances would dero-

gate from the purposes and policy of the act respecting our services in foreign trade, since once deprived of the subsidy, the vessel would obviously not be able to compete against foreign operators again.

Second. It would further derogate from the purposes and policy of the act to allow significant transfers from subsidized foreign trade into the domestic trade outside the limited and temporary ambit of Section 506. Such transfers would not merely reduce available shipping for foreign trade, but would have the effect of displacing existing tonnage or eliminating to that extent opportunities for new construction in domestic trade. Our recent rule applying Section 506 to the Alaska trade illustrates our general approach in this regard: Subsidized tonnage may be used for not to exceed six months upon a finding of real need in the trade, and will in any case give way to unsubsidized tonnage with coastwise privileges as it is delivered from shipyards or otherwise becomes available. Widespread permanent transfer would negate this policy.

These dual elements of the coherent national policy for procuring an adequate fleet respectively for foreign and domestic commerce require that as a general rule vessels properly awarded construction-differential subsidy shall be held to their contractual agreements to operate exclusively in the foreign trade, and that transfers to domestic trade shall be limited in accordance with Section 506.

From this general principle the Maritime Administration will in exceptional individual cases consider a departure where certain combinations of circumstances are found to exist, including at least the following:

1. No other opportunities for employment in foreign trade can be generated for the vessel during a protracted period that demonstrably exceeds normal cyclical exceptions;

2. Specifically because of the vessel's unemployment, the holder of title (as distinguished from a lessee or charterer), whose primary business must be the construction or operation of ships (as distinguished from financing such construction or operation), is threatened with corporate bankruptcy, which cannot be ameliorated by other financial concessions or means;

3. The government will sustain substantial financial loss through such bankruptcy; and

4. Agreement to accept repayment of subsidy will, on balance, result in greater benefit than detriment to the purposes and policy of the act. In measuring this balance, opportunity on ten-days' notice to be heard in writing will be granted to affected interests in the domestic trade and in the shipbuilding industry.

[As at present advised, the Maritime Administration has reason to believe that only one additional vessel, the BAY RIDGE, would present a case for qualifying under this rule. However, market conditions may substantially alter before delivery of this vessel.]

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF JOHN J. ERVIN

John J. Ervin hereby certifies that:

1. He is a United States citizen, age 49, residing at 5838 North 4th Street, Philadelphia, Pennsylvania 19120;

2. He is President of Trinidad Corporation, a Delaware corporation ("Trinidad"); and

3. The following statement concerning Trinidad is true and correct to the best of his knowledge, information and belief:

Trinidad, a wholly-owned subsidiary of Barber Oil Corporation, was formed in 1944 to operate and manage a fleet of U.S. flag tankers under long and short term charters to major oil companies. Trinidad presently conducts its business from offices in the Public Ledger Building in Philadelphia, Pa. and has approximately 37 employees. Trinidad's assets are in excess of $23,000,000 and the Shareholder's Equity is approximately $11,600,000.

Trinidad is the owner of five 27,000 DWT U.S. Flag tankers, four of which are operating under transportation contracts with a major oil company. The fifth tanker is under charter to the Military Sealift Command of the U.S. Department of the Navy.

In 1976 Trinidad purchased all the capital stock of Mathiasen's Tanker Industries, Inc. ("Mathiasen's"). Mathiasen's has on long term bareboat charter three 80,000 DWT U.S. Flag tankers. Two of these vessels are under time charter for terms equal to their corresponding bareboat charter. The third vessel has been sub-bareboat chartered to an affiliate of Trinidad, Glacier Bay Transportation Corporation ("GBC") for a term coinciding with the term of the bareboat charter to Mathiasen's. GBC in turn has sub-bareboat chartered the third vessel to ABC for a term of three years.

None of the eight U.S. Flag tankers mentioned above is the beneficiary of a construction-differential subsidy. Each must compete on its own in the domestic or foreign trade upon expiration of the charter or transportation contract to which it is presently subject.

In April, 1976, Barber announced its intention to become a major carrier of Alaskan crude oil through its subsidiary, Trinidad. The plan was to be implemented through the acquisition by Trinidad of Mathiasen's as above indicated and the acquisition of an interest in Alaska Bulk Carriers, Inc. ("ABC"), which holds a contract of affreightment with The Standard Oil Company (Ohio), ("Sohio"), contemplating the annual transport by ABC of up to 51 million barrels of crude oil from Alaska to California and the two acquisitions placed Trinidad in a position to participate as a major factor in this transport. The acquisitions represent a combined Barber and Trinidad commitment in excess of $9,000,000.

Subsequent to the two acquisitions, Trinidad entered into a multi-million dollar bank loan agreement to finance its cash requirements during the term of the contract of affreightment with Sohio.

Trinidad's acquisition of Mathiasen's and Trinidad's acquisition of an interest in ABC and the internal and external financial commitments of Trinidad relevant thereto were all undertaken in reliance on projections which assumed that U.S. Flag tankers which are the beneficiaries of construction-differential subsidies would continue to be barred by statute from the Alaska crude oil trade in particular and the U.S. coastal trade in general.

It is fair to say that if Barber and Trinidad had known in early 1976 that any tonnage then barred from participation in these trades would subsequently, by administrative fiat, be permitted to operate therein, the acquisitions may very well never have been consummated or, if consummated, would have been on terms far more favorable to Trinidad than those in effect at the present time.

More specifically, during the period from June, 1979 through August, 1980, Trinidad may have to find employment for a total of 215,000 DWT of U.S. Flag tankers in the open market. As a practical matter, the U.S. coastal trade is the only viable market. It is a matter of public record that the U.S. Flag tankers qualified to operate in the U.S. coastal trade have an aggregate dead weight tonnage of approximately 9,500,00. Similarly, U.S. Flag tankers in existence or under construction which enjoy or will enjoy construction-differential subsidy and are, therefore, precluded from that trade, have an aggregate dead weight tonnage of approximately 5,000,000. Obviously, any projections which Trinidad has made in the past or may make in the future with respect to the deadweight tonnage available in U.S. coastal trade during the period from June, 1979 through August, 1980 will be greatly distorted if the T. T. STUYVESANT (22,5000 DWT) or the TT. BAY RIDGE (225,000 DWT) or other vessels within the 5,000,000 tonnage category, suddenly become available to compete, long term, in the coastal trade which now has a maximum available dead weight tonnage of 9,500,000. The U.S. coastal charter market has already softened to reflect this possibility but presumably would regain stability if the removal of the statutory disability to enageg in coastwise service was the subject of a judicial restraining order.

The impact on Trinidad of the removal of the statutory disability as to a significant amount of tonnage

(and 225,000 dead weight tons is significant) ranges from materially adverse at best to disastrous at worst. Moreover, if the Maritime Administration action which is the subject of the litigation captioned as above is not restrained, the adverse financial impact on the assets and operations of Trinidad and other companies similarly situated will be irreparable in that the permanent long term financing for the construction costs of the T. T. STUYVESANT will have been accomplished by the public sale of millions of dollars of government-insured bonds, the proceeds of which will have been distributed to construction lenders, contractors and other parties without possibility of recall or recision.

/s/ John J. Ervin
JOHN J. ERVIN

Sworn to and subscribed before me this 21st day of September, 1977.

/s/ Dorothy D. Barbuscia
DOROTHY D. BARBUSCIA

Notary Public, Philadelphia, Philadelphia Co.

My Commission Expires March 13, 1980.

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF LARRY F. LIDDLE

I am Larry F. Liddle, Secretary of Alaska Bulk Carriers, Inc. (ABC).

1. Alaska Bulk Carriers, Inc. is a Pennsylvania corporation. Its address is Foot of Morton Avenue, Chester, pennsylvania 19013.

2. Alaska Bulk Carriers charters and employs three unsubsidized U.S. tankers. Each of these vessels was built without construction subsidy. The three ships are the PRINCE WILLIAM SOUND, of 124,000 deadweight tons (DWT), the GLACIER BAY (formerly JOSEPH D. POTTS), of 80,000 DWT, and the AQUILA (formerly NOTRE DAME VICTORY), of 80,000 DWT.

3. All three ships were designed and built by Sun Shipbuilding and Dry Dock Company. The ships, by design, are suited to the carriage of oil from Alaska to the U.S. west coast or to transshipment facilities on the west coast of Panama. The decision to build these ships was made by management, relying on their use in the Alaska trade to carry oil. They are too large for transit through the Panama Canal and for use in any other domestic trade. Because of the statutory restrictions imposed by law on ships built with construction differential subsidy, the ships were built without benefit of subsidy.

4. All three ships are used by ABC to fulfill a contract with Standard Oil of Ohio (SOHIO) to carry oil from the Trans-Alaska Pipeline. The contract has a term of

three years, ending in 1980. After 1980, the PRINCE WILLIAM and the GLACIER BAY will not be employed unless a new domestic charter is made for these vessels.

5. Decisions are made with respect to the building and chartering of U.S. ships based on the restrictions in the Merchant Marine Acts which (1) permit only U.S.-built and registered ships to operate in the domestic trades including the trades from Alaska to the mainland, and (2) prohibit ships built with construction differential subsidy (CDS) from operating in the domestic trades. Until now, the decision to build or to undertake financial commitments with respect to unsubsidized vessels were based on assessments of the capacity of the already existing unsubsidized fleet, and the prospects for these vessels' employment in the domestic trades. An undertaking to build an unsubsidized ship means that the owner must assume the financial risk of the full cost of a ship, whereas an undertaking to build a subsidized ship involves much less financial risk.

6. In the late 1960's and again in the 1970's, the prospect of increased need for large tankers to carry Alaska oil to the U.S. mainland encouraged the investment of private capital resources or credit lines for tanker construction without CDS subsidy. Each owner evaluated the anticipated volume of Alaskan oil, the likely destinations, and the other ships in the market which likely would be competing to transport the oil. Ships which were built in U.S. shipyards with subsidy were built knowing that they could only be used in foreign trades.

7. The established ground rules have been that vessels built with CDS are not able to operate in domestic trades and the domestic trades were reserved for U.S.-built ships. The economic decisions of the industry have been based on these rules.

8. Unsubsidized vessels cannot compete on an even footing with subsidized vessels. The costs of materials

and labor involved in ship construction have been steadily accelerating for many years. The table below gives Bureau of Labor Statistics indexes which measure inflation in the major components of ship prices.

INCREASED SHIPBUILDING COSTS

		Costs of Labor Dollars/Hour	
1973	July	$4.58	100%
1974	July	4.94	
1975	July	5.50	120%
1976	July	6.00	
1977	July	6.40	140%

Bur. of Labor Stat.—Class 3731 Shipbuilding and Ship Rep. (Labor) Hourly Index

		Material Cost Index (base 1967)	
1973	July	132.8	100%
1974	July	180.3	
1975	July	183.4	138%
1976	July	198.7	
1977	July	210.3	158%

Bur. of Labor Stat—Code 10 Mater. Esc. Factor (Metal and Metal Prod.)

In only four years, labor costs rose 40% and material costs rose 58%. Thus, a subsidized ship built four years ago is available at a base cost 50% below that of an unsubsidized ship now being delivered—even if unamortized subsidy is repaid. Of course, if the subsidy is not repaid but the owner of the subsidized vessel merely promises to repay the subsidy over twenty years the base cost is even lower. These lower base costs mean that if a subsidized vessel could be "cleansed" (i.e., permitted to repay CDS and operate without restriction in domestic trades) it could be offered at a significantly lower charter rate than an unsubsidized vessel and recover the same rate of return.

9. IF CDS vessels were available for use in the domestic trades, the maritime industry will not be willing to make financial commitments for new vessels without construction subsidy. CDS permits the maximum flexibility for the investment. With CDS, a ship could operate in foreign commerce. In bad times, it could be "cleansed"

and enter the domestic market. The result would be heavy and unnecessary pressure on the subsidy program.

10. Therefore if CDS-built vessels were available for use in the domestic trades, new ships would not be built without construction subsidy. This in turn, results in increased future pressures for "cleansings." If new unsubsidized vessels are not built, there will be a future shortage of ships for use in the domestic trades which will lead to further "cleansings."

11. The action of the Maritime Administration permitting the repayment of construction differential subsidy and lifting restrictions on operation in domestic trades with respect to the SS STUYVESANT has created uncertainty within the industry. No one knows whether, and under what circumstances other CDS built vessels may be cleansed and made available for use in the domestic trade. The existence of this uncertainty seriously hurts the industry. It is of the utmost importance to the industry that there be a settled rule governing the competitive position of subsidized and unsubsidized vessels. Shipsowners are accustomed to dealing with various types of uncertainty and risk. Risks and uncertainties created by ad hoc government decisions, without any known guidelines, create disruption in the marketplace. The uncertainty engendered by MarAd's action "cleansing" the SS STUYVESANT is highly disruptive both to the shipbuilding and domestic charter markets.

12. The serious disruption and damage that is caused by the "cleansing" of the SS STUYVESANT (and the projected cleansing of its sister ship, the SS BAY RIDGE) from the restrictions governing operation of a vessel built with construction differential subsidy can more easily be understood when one considers that recently 29 unsubsidized U.S. tankers suitable for the Alaska trade (*i.e.*, domestic unsubsidized tankers too large to transit the Panama Canal) have been built or ordered. The cleansing

of the SS STUYVESANT and the SS BAY RIDGE will increase the supply of large tankers "authorized" for domestic trade but unable to transit the Panama Canal by thirteen percent.

13. The serious impact of this uncertainty upon the Maritime industry is reflected in the objections registered by the Shipbuilders Council of America to the action taken by MarAd with respect to the SS STUYVESANT. These are set forth in a letter dated September 20, 1977, which I have attached. This letter in markedly strong tones expresses "unanimous concern" about the "implications of this decision as affecting (1) a precedent whereby others may be tempted to seek the same deviation from long-standing policy, (2) the statutory obligation of the Congress to continue to provide CDS funds, (3) the prospects of new building opportunities for Jones Act ships, (4) the current or prospective availability of Jones Act vessels built specifically for domestic trade operations, and (5) the inherent movement toward putting the Federal Government in the questionable role of banker in refinancing, over a long term, at probably less than commercial rates of interest, a straitened project which had been initially supported by public funds and guaranteed by the full faith and credit of the public treasury."

14. Because the MarAd action with respect to the SS STUYVESANT caused an uproar in the industry, a meeting of the Independent Tanker Owners Committee was called for Thursday, September 8, specifically to discuss this action. At that meeting, it was learned that the Maritime Administrator had assured some of the Committee members that MarAd would issue regulations designed to bar future "cleansings" if the industry would agree not to appeal the SS STUYVESANT decisions to the Secretary of Commerce and especially to a court. Counsel for the Independent Tanker Owners Committee

was invited to and did draft regulations for that purpose and they were circulated to many industry members or representatives. I believe that when Shell Oil Company asked for a discretionary review by the Secretary of Commerce, the proposal was dropped by MarAd, although talk of regulations designed to "shut the door" behind the STUYVESANT and possibly the BAY RIDGE (I understand MarAd would not commit itself to foreclose the possibility of "cleansing" the BAY RIDGE) still continues.

15. MarAd's actions permitting the SS STUYVESANT to repay CDS and to permanently operate without restriction in the domestic trade (and its probable intention to take similar actions for the SS BAY RIDGE) cause serious, immediate and irreparable harm to ABC. In the first place, ABC is damaged in terms of its ability to go out into the charter market now and secure future charters for its three vessels which have no employment past 1980. The uncertainty engendered by MarAd's actions has disrupted the charter market. Not only has great tonnage been added by fiat, with the "cleansing" of the SS STUYVESANT, but prospective charterers are taking a "wait and see" attitude, waiting to see if the SS BAY RIDGE and other CDS vessels are made available.

16. Long-term financing is still needed for the Prince William. (ABC is committed to a charter for the Prince William for at least 20 years.) We are presently in the market seeking this financing, but our ability to secure bank financing now is seriously weakened by the prospect of competition of CDS-built vessels. Investors rely on the future prospect of employment for the vessel, looking at the demand for the type of vessel and the expected supply. But the uncertainties created by MarAd's action and the competition of the SS STUYVESANT and the SS BAY RIDGE upset the equation upon which ABC relied in undertaking its charter commitments and seriously impair its position with investors.

17. If the SS STUYVESANT and SS BAY RIDGE are permitted to repay CDS and permanently operate without restriction in the domestic trade, these ships will be direct, lifelong competitors of the three ABC ships and other tankers built for the Alaska oil trade. The only domestic trade for which the SS STUYVESANT and SS BAY RIDGE are suitable is the carriage of oil from Alaska to the U.S. west coast. Their size precludes them from other domestic markets. (The other major domestic market involves the movement of petroleum products from the U.S. Gulf Coast to the U.S. east coast. The terminals in this market cannot handle ships which are larger than 35,000 DWT.)

18. This is unfair competition. In undertaking the responsibilities of ownership or primary financial responsibility (such as that of a long-term bareboat charterer) for a CDS-built ship, Seatrain/Polk made a conscious election to limit trading opportunities to foreign commerce. The U.S. government paid up to half of the costs of the ship in order to have the ship participate in foreign commerce in the national interest. For ABC, committing to charter a U.S. ship built without subsidy was a conscious election to operate in the domestic trade. Because of the higher costs of building the ship, only rarely can it participate in the foreign market. In forgoing the CDS, a far greater risk is assumed.

19. Government-insured financing and CDS aid for the SS STUYVESANT was committed as early as 1972. From that time until the MarAd actions which are the subject of the pending motion, the domestic tanker industry made numerous serious financial decisions and commitments based on market and capacity projections which did not include Seatrain's vessels (STUYVESANT and BAY RIDGE) which were contractually excluded from domestic trade.

20. If the unsubsidized operator must see his investment through good times and bad, the subsidized operator should have no more favorable treatment. Yet in the case of the SS STUYVESANT, the unsubsidized U.S. Merchant Marine and U.S. taxpayers must bear the burden of saving a subsidized shipbuilder from the economic consequences of an unsuccessful and unwise decision.

21. The "cleansings" permit owners and operators of "CDS" ships to cash in on an increase in the value of subsidized ships, resulting from inflation, at the expense of unsubsidized shipowners and operators who took greater risks in forgoing federal aid. But even if the costs of a "cleansed" subsidized ship were the same as that of its unsubsidized competitor, it would still be unfair to change the ground rules and to subject unsubsidized ships to the competition of subsidized ships when the unsubsidized fleet took the economic risks.

22. Emergency injunctive relief is essential to remove the uncertainty introduced by MarAd's action and to prevent the unsubsidized fleet from the permanent unfair and illegal competition of the SS STUYVESANT, and probably the SS BAY RIDGE. The issuance of an emergency injunction will be a signal to the industry that MarAd will not be permitted to make up the rules as it goes along, with no laws or guidelines applicable to all. This will counter the disruptive effect of MarAd's action on the charter and shipbuilding markets and on the economic position of the owners and operators of unsubsidized ships.

23. Unless emergency relief occurs, the domestic tanker industry and the U.S. taxpayer will almost certainly be faced with a *fait accompli* whose effects could not be undone by any relief resulting from an ultimate finding that MarAd/MSB has acted unlawfully. After the delivery of the SS STUYVESANT and the MarAd closing—both are slated for September 23, 1977—the financial

affairs of the many participants in the proposed STUYVESANT transactions will be so intertwined that sorting out the pieces and restoring the parties to their pre-"closing" positions will be almost impossible. Indeed (as described in the following paragraph), it would seem that MarAd could never be placed in a pre-closing position having once guaranteed a huge amount of new Title XI debt on the vessel. *Its* potential liabilities for Title XI guarantees will have more than doubled.

24. At the present time (prior to implementation of the MarAd actions protested herein) MarAd has committed the United States to $28,845,000 in presently-placed Title XI debit in respect of the STUYVESANT. That is, if Seatrain/Polk were to default on its presently outstanding Title XI debt, MarAd would be liable for $28,845,000 in obligations which it has insured against default. If the contemplated Title XI closing (among MarAd, Seatrain/Polk, General Electric Credit Corporation, Chase Manhattan Bank and others) take place, MarAd will have guaranteed an *additional* $31,355,000 in Title XI obligations. If the pending motion for emergency relief is not granted, and assuming that plaintiffs ultimately prevail on the merits, the following consequences will ensue. The Sohio domestic charter will be declared unlawful in violation of Section 506 restrictions. That declaration of illegality will almost certainly cause Queensway (the bareboat charterer of the vessel) to default in its charter hire obligations, thus setting the stage for further litigation seeking an (administrative of judicial) declaration of the rights as between the bondholders, MarAd, Queensway, and General Electric Credit Corporation (GECC), the equity participant in the complex leveraged-lease, Title XI transaction (scheduled for September 23, 1977). The exact outcome of such a complex dispute is impossible to predict, at least not without opportunity to examine all the documents which the parties to the transaction intend to execute. The Maritime Administration, having pledged the full faith and credit of the United States with respect to all the Title XI obligations (including $31,355,000 in *new* obligations), is the party which could very well bear the financial brunt of its own illegal actions.

25. Thus, if the proposed "cleansing" and "closing" are allowed to proceed, an additional $31,355,000 of government funds will be placed at risk in the "second mortgage" Title XI guarantee tier; the financial lessor (GECC) will have purchased the vessel and the purchasers of the Title XI "second mortgage" obligations will have committed their funds. Later developments in this case could force an unwinding of these financial arrangements with serious consequences to the financial parties, as well as exposing the government to large monetary losses on its guarantees.

/s/

Signed and sworn before me this 22nd day of September, 1977.

/s/

SHIPBUILDERS COUNCIL OF AMERICA

800 New Hampshire Ave., N.W.
Washington, D.C. 20037

September 20, 1977

Dear Mr. Secretary:

The recent decision of the Maritime Subsidy Board in approving a revised financing plan under which the 225,000 dwt tanker STUYVESANT—built by Seatrain Shipbuilding Corporation, Brooklyn, NY with $27,200,000 in construction differential subsidy (CDS) funding and a Title XI Federal ship mortgage guarantee of $28,845,000—would be permitted to operate as a Jones Act vessel and in worldwide trade through repayment of CDS over a period of 20 years with interest was discussed at considerable length by our Shipbuilding Committee at its meeting in New Orleans, Louisiana, on September 14, 1977.

It is our understanding this decision contemplates a redetermination of the actual construction cost of the STUYVESANT and an additional Title XI obligation in the amount of $31,355,000.

I am therefore instructed to convey to you the unanimous concern of those present with respect to the implications of this decision as affecting (1) a precedent whereby others may be tempted to seek the same deviation from long-standing policy, (2) the statutory obligation of the Congress to continue to provide CDS funds, (3) the prospects of newbuilding opportunities for Jones Act ships, (4) the current or prospective availability of Jones Act vessels built specifically for domestic trade operations, and (5) the inherent movement toward putting the Federal Government in the questionable role of banker in refinancing, over a long term, at probably less than commercial rates of interest, a straitened project which had

been initially supported by public funds and guaranteed by the full faith and credit of the public treasury.

It was clearly the consensus of our Committee that this entire procedure is not compatible with the motivating intent of the Congress in providing CDS funds for ships to transport a "substantial portion of the waterborne export and import foreign commerce of the United States."

Recognizing the improbability of reversing the Board's decision in the current instance, despite the merits of any contrary position, I am further instructed to request, most respectfully, that the Maritime Administration take immediate steps, through rulemaking and otherwise, to ensure that further breaches of established CDS policy will not be entertained. Under no circumstances, in our view, should the STUYVESANT decision be considered as a precedent for other improvident arrangements.

With best personal regards always, I am

Cordially,

/s/ Edwin M. Wood
EDWIN M. WOOD
President

Honorable Robert J. Blackwell
Assistant Secretary of Commerce
for Maritime Affairs
Maritime Administration
Washington, DC 20230

Civil Action No. 77-1645

Civil Action No. 77-1647

[Filed Sept. 28, 1977—James F. Davey, Clerk]

[Caption Omitted in Printing]

MOTION OF INTERVENOR-DEFENDANTS SEATRAIN AND POLK TO DISMISS

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, intervenor-defendants Seatrain and Polk move that the Complaints in these actions be dismissed on the grounds that (1) plaintiffs have failed to allege facts sufficient to establish standing to assert the claims set forth in the Complaints, and (2) accepting, for purposes of this Motion, the well-pleaded allegations of the Complaints as true, the Complaints fail to state claims upon which relief can be granted. In the alternative, intervenor-defendants move for such other relief as the Court may deem appropriate to dispose of the legal issues raised by the pleadings on or before September 30, 1977. The basis for these motions is set forth in intervenor-defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss and in Opposition to Motions for Preliminary Injunction.

As explained in that Memorandum and the accompanying affidavits, it is critical to the intervenor-defendants that the transactions complained of in the Complaints close on September 30, 1977. If the closing is postponed beyond that date, it is likely that the transactions will never be consummated. In that case plaintiffs will have succeeded, by the expedient of delay obtained through

Temporary Restraining Orders and Preliminary Injunctions, in obtaining all the relief they seek on the merits —to bar the STUYVESANT from competing in the domestic trade.

Because of the shortness of time and the extreme importance to the parties in having this matter resolved prior to September 30, intervenor-defendants respectfully request that this Motion to Dismiss be considered at the hearing scheduled for September 29 on the Motions for Preliminary Injunction.

Respectfully submitted,

WILLIAMS & CONNOLLY

By John W. Vardaman, Jr.
JOHN W. VARDAMAN, JR.

By William E. McDaniels
WILLIAM E. MCDANIELS
1000 Hill Building
Washington, D.C. 20006
(202) 331-5000

COLES & GOERTNER

By Neal Michael Mayer
NEAL MICHAEL MAYER
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-5460

PRESTON, THORGRIMSON, ELLIS, HOLMAN & FLETCHER

By Jonathan Blank
JONATHAN BLANK
1776 F Street, N.W.
Washington, D.C. 20006
(202) 331-1005

[Filed Sept. 28, 1977—James F. Davey, Clerk]

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

* * * *

II. THE AUGUST 31, 1977 ACTIONS WERE LAWFUL

The starting point for an understanding of the issues presented is the Merchant Marine Act, 1936, itself. Congress has specifically granted the Secretary and her delegees, MarAd/MSB, "the functions with respect to the making, amending and terminating [of Title V] subsidy contracts." [6] The amendment of a CDS contract to permit acceptance of a CDS repayment and release of § 506 trade restrictions is an exercise of this contracting authority, apparent from the plain words of the Act, and recognized in the Secretary's interpretations of the Act concurred in by the Comptroller General and Congress.

[6] *See* Reorganization Plan No. 21 of 1950, § 105(1), 64 Stat. 1273 (1950) (creating Martime Administration and creating and delegating contractual powers to Federal Maritime Board), as amended by Act to Amend the Merchant Marine Act, 1936, Pub. L. 91-469, 84 Stat. 1036 (1970) (designating Assistant Secretary of Commerce as Maritime Administrator); and Reorganization Plan No. 7 of 1961, 75 Stat. 840 (1961) (creating and delegating contractual powers of Federal Maritime Board to Federal Maritime Commission) as amended by Act to Amend the Merchant Marine Act, 1936, Pub. L. 91-469, § 201, 84 Stat. 1036 (1970) (as summarized above), as implemented by various departmental orders.

Even where the authority to amend is not expressly granted as here, the United States Court of Claims has held

> In general, an officer authorized to make a contract for the United States has the implied authority thereafter to modify it, particularly where as here, it is in the best interests of the United States to do so. *Whitman* v. *United States*, 110 F. Supp. 444, 450 (Ct. Cl. 1953).

Under the Act, the Secretary of Commerce is given broad powers to administer the maritime functions of this country, which she has delegated to the Assistant Secretary of Commerce for Maritime Affairs and to the Maritime Administration/Maritime Subsidy Board. The Secretary has the responsibility to keep current on the total spectrum of the maritime industry and "to study all maritime problems arising in the carrying out of the policy set forth in Title I of this Act." Section 212(a). As noted by the Senate Committee on Commerce in 1935,

> "The Authority [Secretary] is given a considerable amount of discretion in the solution of its problems . . . . Shipping is a business of a highly competitive and changing nature and its governmental contract must be given the power to prompt decision in dealing with situations as they arise." S. Rept. No. 713, 74th Cong., 1st Sess. at 4 (1935).

Title V of the Merchant Marine Act establishes a construction-differential subsidy program in recognition that it costs more to build a ship in American shipyards than in foreign shipyards. Vessels for the United States domestic trade are required to be American-built, -owned and -registered under the Jones Act, Section 27 of the Merchant Marine Act, 1920,[7] as amended, 46 U.S.C. 883, as amended. Ships in foreign trade are not so limited and, absent some equalizer, would be built in foreign

[7] The Jones Act has no application to the issues in this case. The STUYVESANT qualifies for domestic trade under the Jones Act because it is and will be American-built, -owned and -registered. The only impediment to domestic trade by the STUYVESANT is the CDS restriction in its contract.

shipyards at a cheaper cost. To stimulate shipbuilding in American shipyards and to enlarge the number of American-owned ships, Title V authorizes the Government to subsidize the construction in American shipyards of ships intended for use in foreign trade. In 1970, Congress amended the 1936 Act to provide, *inter alia*, that the United States would pay construction-differential Title V subsidies for liquid bulk vessels including tankers such as the STUYVESANT.[8]

The CDS statutory scheme becomes apparent from a section by section analysis of Title V. Section 501 provides for applications to the Secretary of Commerce for CDS and vests broad discretion in the Secretary to determine eligibility for subsidy including economic feasibility. Sections 502 and 504 contain the basic CDS contracting authority. And once again it is broad in accord with the Act's basic grant of contracting authority. Section 503 provides that CDS-built vessels shall be documented under the U.S. flag and remain so documented, in the case of tankers, for 20 years. Section 505 provides that the construction be accomplished in a United States shipyard with the use of articles, materials and supplies made in the United States. Finally, as relevant to this proceeding, § 506 provides that owners of vessels for which CDS has been paid "shall agree" that their vessels will be limited to foreign trade and provides for the repayment of CDS when the vessel is operated in the domestic trade under enumerated circumstances.

As can be seen, the statute is specific only insofar as it establishes requirements for eligibility, pricing, place of shipyard, and employment. The implementation and the details of the economic and other judgments involved in the subsidy contract decisions are matters left to the Secretary's discretion. Since its enactment in 1936, Con-

[8] P.L. 91-469, §§ 4-6; 84 Stat. 1018-23 (1970).

gress has amended the Act several times. In 1970, a total re-enactment occurred.[9] From 1936 on, the Secretary and her predecessors administered the CDS program and made, amended, and terminated CDS contracts. These amendments have included the acceptance of CDS repayment and the release of § 506 trade restrictions.

In 1964, Grace Line determined that two vessels for which CDS has been paid for reconstruction could not be operated as originally intended and therefore sought to repay to the Government the unamortized construction-differential subsidy and amend its CDS contracts to remove the trading restrictions required by § 506. The Secretary sought the opinion of the Comptroller General of the United States on whether he agreed with the Secretary "that the Maritime Subsidy Board has the authority to amend construction-differential subsidy contracts . . . so as to free the vessels from the restrictive provisions incorporated therein pursuant to Section 506 of the Merchant Marine Act of 1936, as amended." By the Opinion of the Comptroller General B-1055039, 44 Comp. Gen. 180 (1964), 15 Pike & Fischer SRR 10, 209 the Secretary's view that he had the authority was sustained.

Significantly, the issue was not whether the Secretary had the authority to amend the CDS contract but rather whether there was anything in § 506 which precluded this particular amendment. The Comptroller General concluded that the Secretary did have the authority to accept CDS repayment and could on the basis of such repayment remove the § 506 restrictions as to trading area. The Comptroller General reasoned that the § 506 trading restrictions were keyed to the effective life of the vessel and did not permanently bar a CDS-built vessel from domestic trade. Entry into the domestic trade could occur either at the end of a vessel's economic life or earlier, under certain time and place limitations and

[9] P. L. 91-469, 84 Stat. 1018 *et seq.* (1970).

with the consent of the Secretary, so long as pro rata CDS repayments were made taking into account the useful life of the vessel. Thus the Comptroller General held:

> "[I]t appears that if the Government receives the full benefit of its subsidy by the owner's operations in the foreign trade and the compliance with the other construction differential subsidy contract obligations for the statutory life of the vessel, *or*, if, *in the case of a vessel which has not reached the end of its statutory life, the unamortized subsidy is repaid to the Government, the owner should be in the same position as if he had paid the full domestic price of the vessel; that is, he should not be required to make further repayments and should not be bound to operate the vessel exclusively in foreign trade.*" 44 Comp. Gen. at ——, 15 Pike & Fischer SRR at 10, 214. (Emphasis added.)

Essentially, the Comptroller General found that a CDS contract is for a specific period of time, and, as the vessel is used under the contract, the subsidy is in effect being amortized or paid off. Thus for each year the vessel operates in the foreign trade there is amortized for the vessel 1/20 of the CDS payment. The Comptroller General therefore concluded that if the CDS is in effect amortized over a period of time, then one can effectively accelerate the amortization by repayment of the CDS. As long as all the CDS is repaid, the *quid pro quo* for the payment of the CDS, the vessel's foreign trade obligation, is satisfied.

As Judge Bryant noted in *American Maritime Association* v. *Stans*, 329 F. Supp. 1179 (1971), *aff'd*, 157 U.S. App. D.C. 394, 485 F.2d 765 (1973):

> "A long-standing administrative interpretation applying to a substantially reenacted statute is deemed to have received congressional approval and has the effect of law. *Commissioner* v. *Noel Estate*, 380 U.S. 678, 682 (1965)." 329 F. Supp. at 1185.

The Secretary's interpretation of her CDS repayment authority affirmed by the Comptroller General in his *Grace Line* opinion, has withstood not only the reenactment of the Merchant Marine Act in 1970 but more importantly was fully considered by Congress in 1972 in connection with amendments to Title XI of the Act.

The purposes of the 1972 Title XI amendments were to improve the responsiveness of the Act to the current financing needs of the shipbuilding industry and to simplify the mechanics of issuing and marketing its obligations. A new section of Title XI was proposed to respond to the Grace Line situation—the full repayment of a construction-differential subsidy and the resultant removal of § 506 trade restrictions. The proposed new section *as introduced* to the House by the then Chairman of the House Committee on Merchant Marine and Fisheries, read:

> "Sec. 1104. (a) Pursuant to the authority granted under section 1103(a), the Secretary of Commerce, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—
>
> * * * *
>
> "(3) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act, as amended, *in order to release such vessel from all restrictions imposed as a result of the payment of such construction-differential subsidy, when such repayment is permitted by the Secretary of Commerce after considering the competitive effect of releasing such vessel from such restrictions*; or . . . . H.R. 9756,

92d Cong. 1st Sess., at 7-8 (1971). (Underlining added.)

The plain words of this proposed section speak to the Secretary's authority to accept CDS repayment in order to release § 506 restrictions. The section facilitated such action by authorizing guarantees to financing and recognized that such action by the Secretary was committed to discretion.

The CDS repayment guarantee section did not ultimately become enacted in the form proposed. It was amended to eliminate the underlined language. As is clear from the history, the amendment did not constrict but expanded the section's coverage. The House Report states as follows:

> Paragraph (3) is new. As introduced, the language of this paragraph would have permitted the Secretary of Commerce to guarantee an obligation which aids in financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy pursuant to Title V, "in order to release such vessel from all restrictions imposed as a result of the payment of such construction-differential subsidy, when such repayment is permitted by the Secretary of Commerce after considering the competitive effect of releasing such vessel from such restrictions." In the entire history of the administration of the 1936 Act there has been only one instance where a construction-differential subsidy repayment, authorized by the Secretary under very special circumstances, could have called into play the provisions of this paragraph. Your Committee questions the desirability of general legislation to deal with such an unusual situation, and feels that Title XI assistance should be extended to all instances of subsidy repayments under Title V, so as to include the relatively frequent

> situation of repayments under the first sentence of section 506 of the Act. Your Committee has therefore amended the legislation by deleting the language quoted above. The paragraph in Title XI does not in any way extend or affect the application of Title V of the Act. H.R. Rep. 688, 92d Cong. 1st Sess., at 9-10.

This language once more envinces an awareness by Congress of the Secretary's authority to accept CDS repayment and to release § 506 restrictions. The Grace Line situation was expressly noted. While Congress declined the opportunity for general legislation to circumscribe the Secretary's discretion to deal with the unusual situation, § 506 was obviously not considered an impediment to full CDS repayment and release because Congress cited § 506 in expanding the guarantees to cover partial repayments under that section.

The Commerce Department supported § 1104(a)(3) as amended, noting that it rested on the Secretary's powers under Title V as a whole, not merely § 506. The General Counsel of the Commerce Department stated:

> The proposed legislation would also permit the Secretary of Commerce to guarantee or to make a commitment to guarantee payment of the principal of and interest on an obligation which aids in financing in whole or in part the repayment of the United States of any amount of construction-differential subsidy pursuant to Title V of the Act. This provision in Title XI does not in any way extend or affect the application of Title V of the Act. As drafted, the language of the bill would preclude the use of Title XI assistance from being available for repayment of construction-differential subsidy in cases where only a partial repayment is being made. This restriction is unnecessary, and that language should be modified accordingly. H.R. Rep. 688, *supra*, at 17.

With respect to accepting repayment and releasing restrictions, the Title V authority relied upon by the General Counsel must be the power to contract. No reading of Section 1104(a)(3) as proposed, its subsequent amendment or its history can support the plaintiffs' proposition that § 506's partial repayment authority precludes the Secretary's authority to accept total repayment and release restrictions.

Despite the tone of plaintiffs' papers, the Secretary's CDS repayment authority comes as no surprise to the industry. For example, James J. Reynolds, the President of the American Institute of Shipping testified at the 1971 Congressional Hearing as follows about § 1104(a)(3):

> The bill would also authorize the use of title XI guarantee in financing repayment to the Government by a shipowner of construction-differential subsidy received in the construction of a vessel in order to free it from all restrictions imposed as a result of the subsidy.
>
> For instance, if a vessel was built with construction-differential subsidy and the owner wishes to buy out the subsidy in order to qualify it for other types of activities, the transaction could be financed under the bill so that he could buy out the subsidy and make the vessel eligible for other services which would be consistent with the objectives of the whole national program. Proposed Amendments to the Merchant Marine Act, 1936: Hearings on H.R. 9756 Before the House Committee on Merchant Marine and Fisheries, 92d Cong. 1st Sess. (1971), at 225.

Later in his statement, Mr. Reynolds noted the joint support for the bill and its parallels to the remainder of the Merchant Marine Act, 1936:

> I would only reiterate my confidence in this bill as the culmination of considerable effort on the part of ship operators, Government, and the financial community, to bring the title XI section up to date so it does indeed prove to be a useful parallel to the basic Merchant Marine Act which you gentlemen in this Congress passed last year. *Ibid.* at 225.

This spirit was reflected in the Committee Chairman's comment "I do not believe that this is a controversial bill and I am unaware of any opposition to it." *Ibid.* at 193.

Since the 1972 amendment to Title XI, the Secretary has exercised her Congressionally recognized power to accept CDS repayment and release restrictions in one case other than the STUYVESANT. On August 10, 1977, the Maritime Subsidy Board permitted the Wilmington Trust Company to free itself of 506 restrictions by repaying CDS on the date of delivery of two new LNG tankers. The repayment of CDS was guaranteed pursuant to Title XI. While the vessels involved were LNG tankers and the immediate trade involved was not domestic, the principle was exactly the same. The Board accepted CDS repayment and lifted § 506 restrictions. The Board furthermore facilitated CDS repayment by guaranteeing financing under Section 1104(a)(3). Letter to Wilmington Trust from James F. Dawson Jr., Maritime Subsidy Board, dated August 10, 1977.

What exists here is more than a long-standing administrative interpretation applying to a substantially reenacted statute [10] which is deemed to have received congressional approval has the effect of law.[11] In *NLRB*

[10] As noted above, the statute was re-enacted in 1970, post *Grace Line*.

[11] *American Maritime Association* v. *Stans*, 329 F. Supp. 1179, (1971), *aff'd* 157 U.S. App. D.C. 394, 485 F.2d 765 (1973). *See Red Lion Broadcasting Co.* v. *Federal Power Commission*, 394 U.S. 367 (1969), where the Court noted:

> "[T]he construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong . . . ." 395 U.S. at 381.

v. *Bell Aerospace Co.,* 416 U.S. 267 (1974), the Supreme Court stated:

> "In addition to the importance of legislative history a court may accord great weight to the longstanding interpretation placed on a statute by an agency charged with its administration. This is especially so where Congress has reenacted a statute without pertinent change. In this circumstance congressional failures to reverse or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress. We have also recognized that subsequent legislation declaring the intent of an earlier statute is entitled to significant weight." 416 U.S. at 274-75.

The evidence here is not only persuasive, it is conclusive. By its 1972 amendments to Title XI facilitating the repayment authority, Congress expressly approved that authority. No other conclusion is possible.

* * * *

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF ROBERT BROWN

ROBERT BROWN, on oath deposes and says:

1. I am the Vice President-Finance of Seatrain Lines, Inc., parent corporation of intervenors Polk Tanker Corp. ("Polk") and Seatrain Shipbuilding Corp. ("Seatrain"). I am fully familiar with the history of the vessel STUYVESANT and the financing arrangements which have been made in regard to its sale.

2. The STUYVESANT is a 225,000 dwt very large crude carrier ("VLCC") built at the Seatrain shipyard, Brooklyn, New York, the former Brooklyn Naval Yard. The STUYVESANT is the third of a series of identical 225,000 dwt tankers to be constructed by Seatrain at its shipyard.

In 1969 Seatrain entered into a long-term lease for the yard and the facilities with the current owner of the yard, Commerce Labor Industry Corporation of Kings, who, utilizing grants from the City of New York, had taken over the yard after the Navy closed its operation.

3. Seatrain arrived at its decision to enter the shipbuilding business at a time when the projected international demand for crude carriers was steadily rising, and when all projections indicated there would be a shortfall of available tonnage by the time the vessels were completed. Seatrain has invested approximately $38,000,000

of its own funds in modernizing the yard, training the work force, and generally making the yard a working civilian shipbuilding facility.

4. The conversion of the Navy facility to a civilian shipyard was strongly encouraged by the local governments of New York and the Economic Development Administration ("EDA"), a branch of the U.S. Department of Commerce. The yard is located in the Bedford-Stuyvesant area of New York, an area of chronic high structural unemployment. It currently employs approximately 2,200 workers. Of the yard's employees, approximately 85 percent are members of disadvantaged minorities, substantially all of whom were previously unemployed, and who have been trained by Seatrain as part of the manpower training program undertaken by EDA and Seatrain. A portion of the yard's development was financed through $42,000,000 in loans 90 percent guaranteed by EDA and through an additional $5,000,000 borrowed directly from EDA.

5. The first two vessels, the BROOKLYN and the WILLIAMSBURG, were constructed with the aid of Construction-Differential Subsidy ("CDS") to cover the difference in the construction costs between building the vessels in the Seatrain shipyard and in a foreign facility. These ships were completed on December 31, 1973 and December 31, 1974, respectively. At the time of their delivery they were subject to long-term charters to American Petrofina, Inc. Currently, both vessels are in lay-up.

6. In January, 1975 Seatrain was forced to cease construction on the next two vessels, the STUYVESANT and the BAY RIDGE which were then being constructed in its shipyard with the aid of CDS. This action came about as a result of the severe downturn in the demand for tankers which occurred as a result of numerous factors, primary among these being the oil embargo following the 1973 war in the Middle East, the increase

in the price of crude oil and the subsequent downturn in the world economy resulting therefrom, and the presidential veto of the Energy Transportation Security Act of 1974. The halt in the construction of the STUYVESANT and the BAY RIDGE required Seatrain to lay off substantially all of its 2,500 man work force.

7. Later in 1975, following the layoffs, Seatrain negotiated with EDA for an additional $40,000,000 in 90 percent government guaranteed bank debt to reopen the shipyard and recommence construction on the STUYVESANT and the BAY RIDGE. The yard was reopened in April, 1975, although it took a number of months to bring the operation up to speed. The shipyard workers were recalled and training was recommenced. Approximately 90 percent of the workers laid off returned to their former positions upon recall, indicating that substantially all of them had been unemployed during the layoff period.

Plans for the building of a fifth vessel, on which construction had not begun, were cancelled.

8. From the time it reopened the yard and resumed construction on the STUYVESANT and BAY RIDGE, Seatrain actively sought employment for these vessels. It was able to interest Standard Oil Company of Ohio ("SOHIO") in chartering the STUYVESANT.

9. Serious negotiations with SOHIO commenced during December, 1976. Initially Polk attempted to secure from SOHIO a long-term charter for the vessel, but, following lengthy negotiations, the parties executed an agreement on June 21, 1977 specifying a three-year time charter. The agreement called for delivery of a vessel qualified to operate in the coastal trade, which is considered domestic trade.

Having signed this time charter, Polk was, for the first time, in a position to offer the STUYVESANT for

sale in the leveraged lease type of financing transaction which Seatrain affiliates previously had utilized in the sales of the BROOKLYN and WILLIAMSBURG. Polk retained SHS Leasing Corporation, a subsidiary of Shearson Hayden Stone to attempt to place the vessel in a leveraged lease transaction. Such a leveraged lease is the usual financing device utilized in the sale of vessels the size of the STUYVESANT. (The details of the STUYVESANT lease transaction are contained in paragraphs 16-20 of this affidavit.)

10. The pool of available financing institutions for a transaction of this magnitude and complexity is limited. This is due to the size of the transaction in terms of dollars, the risks involved, the knowledge of the maritime business required, and, especially, the need to close the transaction timely prior to the required delivery of the vessel to SOHIO on September 30, 1977.

A leveraged lease agreement involving the STUYVESANT is dependent upon the existence of the SOHIO time charter. Without this time charter it is unlikely that a financial institution would agree to purchase the vessel. Under the terms of the time charter, Polk is required to deliver the vessel to SOHIO no later than September 30, 1977. The crucial element in consummating the sale of the vessel, therefore, was meeting the September 30, 1977 deadline, by which time the vessel had to be delivered to SOHIO and the concurrent closing completed.

11. Negotiations were commenced with General Electric Credit Corporation ("GECC"), the financial institution which had purchased both the BROOKLYN and the WILLIAMSBURG. GECC's familiarity with the documents necessary to close the BROOKLYN and WILLIAMSBURG leveraged leases gave them a capability to process the transaction within the time allowed.

12. Upon reaching a tentative agreement with GECC, Polk approached the Maritime Administration to secure MarAd approval for use of the vessel in the coastwise trade for the three-year period of the SOHIO lease, and for additional financing under Title XI of the Merchant Marine Act.

13. On July 8, 1977, Polk formally applied to the Maritime Administration requesting special permission to operate the vessel for three years in the coastwise trade pursuant to Section 207 of the Merchant Marine Act. In its application, Polk made it clear that it had filed its request because of Seatrain's difficult financial situation and because of the large amount of Polk's and Seatrain's government guaranteed and insured indebtedness. Notice of Polk's July 8, 1977 application was published in the *Federal Register* on July 19, 1977. Following this publication, the Maritime Administration received numerous protests against the application.

Believing that these protests seriously jeopardized its chance to obtain Maritime Administration approval of its application by the crucial September 30, 1977 date, Polk withdrew the application.

14. Polk decided to restructure the financing transaction so as to provide for a complete and unconditional repayment of the CDS. Under the precedent established by the Maritime Administration, and approved by the Office of the Comptroller in the Grace Lines decision, Polk believed such a total repayment would result in the STUYVESANT's being qualified to engage in both the domestic and foreign trades. Polk further believed that, in view of the Grace Lines precedent, this qualification could be readily accomplished before September 30, 1977.

On August 25, 1977, therefore, Polk formally withdrew its application for permission to operate the vessel for three years in the coastwise trade pursuant to Sec-

tion 207 and submitted instead a request to fully repay the CDS. This repayment is to be accomplished with a note payable by Polk to be assumed by the trustee for GECC as part of the leveraged lease financing transaction.

15. In response to the Polk application, the Maritime Administration and the Maritime Subsidy Board issued letters on August 31, 1977 stating that the Maritime Subsidy Board had acted on August 30, 1977 to allow the sale of the vessel to United States Trust Company, ("USTC") as owner-trustee, authorized the repayment of the CDS in the form of a promissory note to be assumed by the owner-trustee, secured by a third preferred ship mortgage, and authorized the amendment of the CDS contracts to release the vessel from most, but not all of the obligations in those contracts (retaining engineering and requisition rights on the vessel).

16. Upcn closing, the vessel will be transferred by Polk, which presently has rights to the vessel under its construction contract with Seatrain, to the United States Trust Company as trustee for GECC, the "equity owner." USTC will assume a twenty-year note executed by Polk in favor of MarAd in the full amount of the CDS issued to Polk on the STUYVESANT ($27,200,000). The note will be payable in level semi-annual installments of principal and interest. It will be secured by a third preferred ship mortgage on the STUYVESANT, and by an interest in the bare-boat charter, time charter and Seatrain Security Agreement described below.

USTC also will assume responsibility for $60,200,000 of government insured indebtedness on the vessel. The indebtedness consists of $28,845,000 of what is known as Tier I, Title XI insured indebtedness, originally issued as a construction loan on the STUYVESANT, and $31,355,000 in what is known as Tier II, Title XI in-

sured indebtedness which will be incurred at the closing. $28,600,000 of the proceeds of this last indebtedness is pledged to repay EDA guaranteed bank debt of Seatrain Shipbuilding Corp.

17. The Title XI bonds, which are insured by the U.S. Government, were put up for sale September 6 and 7, 1977. They were sold to nine institutional investors with an expected closing date of September 23, 1977. They carry a 7.95% rate of interest. This rate of interest also determines the rate of interest on the $27,200,000 note issued for the repayment of the CDS.

When the closing was postponed from September 23, 1977, the Investment Bankers, Kuhn, Loeb & Co., Incorporated, were able to hold the placement through September 30, 1977 although counsel for the purchasers had not committed the purchasers through September 30. However, as interest rates have been rising since September 6, a new issue of bonds would have to be sold if the transaction were delayed beyond September 30, 1977. The new issue would not only carry a higher interest rate, but would also delay the closing substantially, as it takes time to get a date for the sale of new bonds, and then takes two weeks from date of sale to date of closing.

18. Finally, USTC will pay Polk $32,600,000 in cash. These cash proceeds are to be placed in an escrow account entitled the "Seatrain Security Agreement". The funds in the Seatrain Security Agreement, together with the interest earned thereon, are held, as partial security for the benefit of GECC, the equity owner, for such time as it would be at risk in the event of a default on the "bareboat charter" hire. The bareboat charterer is the leasee of the vessel. There is an increasing risk during years 1, 2 and 3 of the charter, and then, subsequently the risk decreases, although it continues throughout the life of the lease. In addition, the Seatrain Security

Agreement, to the extent not pledged to GECC, is also subject to a security agreement to MarAd.

19. Thus, the total purchase price USTC will pay for the vessel is approximately $120,000,000. ($27,200,000 assumed note, $60,200,00 assumed bonds and $32,600,000 cash.)

One of the most important factors making this financing transaction attractive to GECC is that, as the "first user" of the vessel for U.S. corporate income tax purposes, GECC will be able to avail itself of a large investment tax credit. Without this investment tax credit, GECC would not be interested in the arrangement. It is, therefore, imperative that the sale of the vessel to USTC, as trustee for GECC, be completed prior to the vessel's being placed into service under the SOHIO or any other charter.

In fact, in the case of the STUYVESANT, if GECC cannot qualify as the "first user" of this vessel, the benefits of the investment tax credit on the vessel will be entirely lost, thus substantially diminishing the value of the asset. This is because Polk, in the absence of another party willing to purchase and lease the transaction, would be forced to retain ownership of the vessel. Assuming the continued existence of the SOHIO charter, Polk would thereby become the "first user" of the vessel for purposes of the investment tax credit. Because both Polk and the consolidated group of which Polk is a member have substantial tax loss carry forwards, and substantial investment tax credit carry forwards, they would be unable to utilize the investment tax credit, and it would be lost.

20. Under the financing agreement as presently constituted, USTC will "bareboat charter" the vessel to Queensway Tankers for a period of twenty years. Queensway is not affiliated with any other party to the financing

transaction. The bareboat charterer is the leasee of the vessel, and operates the vessel, providing crew, provision, and fuel. The bareboat charter hire is paid to USTC as trustee for the equity owner, which in turn pays the debt on the vessel and the balance to the equity owner as a return on its investment.

Queensway, in turn, will be assigned the "time charter" of the vessel to SOHIO for three years. During the term of the time charter, SOHIO is free to utilize the vessel in whatever manner it desires. As time charterer, SOHIO directs where the vessel is to operate and what cargo it will carry. By telex dated September 24, 1977 SOHIO instructed Polk to dispatch the vessel from its berth in San Francisco so that it can arrive in Alaska on September 30, 1977 for loading. Pursuant to this directive, the STUYVESANT is enroute to Valdez.

As can be seen from the above description, the financial transaction involves many elements, each of which must be completed prior to midnight, September 30, 1977. That is the time at which GECC's commitment to purchase the vessel expires, the last day for delivery to SOHIO under the time charter. Of course, if SOHIO commences use before the sale is completed, the sale will be cancelled.

As has been pointed out previously, the extreme complexity of the STUYVESANT's financing makes it highly unlikely another equity owner can be found for the vessel if GECC's commitment is allowed to expire. It would be impossible to find another such equity owner prior to September 30, 1977.

DAMAGE TO POLK-SEATRAIN

21. The sale of the STUYVESANT was originally scheduled for closing on September 23, 1977. This closing was prevented by the issuance of temporary re-

straining orders on September 22, 1977. As a result of failing to close on September 23, 1977, Polk, on September 24, 1977 suffered a loss of approximately $50,000 and it will continue to incur losses at the rate of approximately $40,000 per day for each day from September 24 through September 30, 1977.

These figures include penalty interest which will have to be paid GECC, interest on the various mortgages which were to be assumed on closing by USTC as trustee for GECC, and the operating, fuel and port costs which Polk will continue to incur because it was prevented from delivering the vessel on September 23, 1977.

Polk's loss, through September 30, 1977 directly attributable to its being prevented from closing on September 23, 1977 totals approximately $294,000.

22. If Polk is prevented from closing on September 30, 1977 the entire leveraged lease transaction as described above could disintegrate because of GECC's release from its firm commitment.

Potential losses arising from the failure to close on September 30, 1977 approximate $35,600,000.

This figure represents the total of:

1. Polk's lost profits under the transaction as presently constituted (approximately $4,500,000);

2. Interest and amortization on the over $56,000,000 of debt which was to be assumed by USTC as trustee for GECC upon closing (totalling approximately $21,200,000);

3. The penalties Polk will have to pay GECC (totalling approximately $180,000);

4. The loss to Polk of the amortization of its equity (approximately $4,600,000); and

5. Polk's loss of interest income on the funds deposited pursuant to the Seatrain Security Agreement discussed above (approximately $5,200,000).

/s/ Robert Brown
ROBERT BROWN

Subscribed and sworn to before me this 25th day of September, 1977.

/s/ Laura May de Matteis
Notary Public for:

LAURA MAY DE MATTEIS

Notary Public, State of New York
No. 24-0915575 Qual. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1979

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF JAMES CARTHAUS

JAMES CARTHAUS, on oath and deposes and says:

1. I am President of SHS Leasing Corporation a subsidiary of Shearson Hayden Stone, Inc. As part of my duties, I am fully familiar with, and regularly engaged in, the placing of large equipment leases for major capital equipment items such as large vessels. I am familiar with the market for such equipment leasing transactions, and make this affidavit on the basis of my knowledge of such market, and the particular facts known to me regarding the sale leaseback transaction involving the STUYVESANT.

When retained by Polk Tanker Corp. to place the financing on the STUYVESANT, I approached several large financial institutions for a placement of the lease, including General Electric Credit Corporation ('GECC'). It was my opinion that syndication of the proposed transaction would be very difficult given the time limits within which to complete the transaction and, therefore, the potential participants in the STUYVESANT transaction were limited to large financial institutions.

2. As initially proposed, the transaction provided that the vessel be qualified to engage in the coastwise trade for a period of three years, with repayment of CDS only for that period. GECC initially negotiated their agreement on this basis, and took Board of Director action approving this proposal subject to documentation.

3. After Polk changed the transaction to include a full repayment of CDS, negotiations took place with GECC and the form of the transaction changed to include the proposed total repayment of CDS.

Subsequently, the transaction was changed again a third time to include an assumption by GECC of both the interest and principal portion of the note repaying the CDS, and the GECC Board of Directors approved this agreement, subject to documentation.

4. It is my opinion that because GECC has already approved numerous alterations in the transaction it would be unlikely to consent to a change in the transaction which either changed the financial terms of the transaction or which would create uncertainty as to when the transaction would close. As practical businessmen, GECC will be unwilling to continue to hold their resources available in the face of substantial uncertainty as to when, if ever, the transaction will close.

5. It is also my opinion that it would be extremely difficult, if not impossible, to place this transaction with another purchaser/lessor on the same terms and conditions once GECC had walked away from the transaction. The potential universe of purchasers is limited. It would be well known in the industry that GECC had abandoned the transaction, and this knowledge might cause other large investors to avoid any transaction involving the STUYVESANT regardless of the merits of the transaction.

6. If the vessel is placed into service prior to its sale, one of the financial incentives which makes investment in such vessels attractive, *i.e.*, the investment tax credit, will be permanently lost. As a practical matter it would be impossible to find a lessor/purchaser for the vessel on the same terms and conditions as the GECC transaction unless that purchaser can avail itself of the investment

tax credit. Therefore, in the event that SOHIO were to insist on use of the vessel pursuant to my understanding of the terms of its charter, *i.e.*, commencing on September 30, 1977, future sale of the vessel would be extremely unlikely, and any sale would have to reflect the impaired value of the vessel as a result of the loss of the investment tax credit.

/s/ James Carthaus
JAMES CARTHAUS

Subscribed and sworn to before me this 26th day of September, 1977.

/s/ Zenobia Wilson
ZENOBIA WILSON

Notary Public, State of New York
No. 24-4638064
Qualified in Kings County
Commission Expires March 30, 1978

AFFIDAVIT OF ROBERT M. MACY, JR.

ROBERT M. MACY, JR., on oath and deposes and says:

1. I am a managing director of Kuhn Loeb & Co. Incorporated, investment bankers. We are assisting Seatrain Lines Inc. in the direct placement of $31,355,000 in Title XI guaranteed indebtedness on the STUYVESANT. I make this affidavit on the basis of my familiarity with the placement of the debt on the STUYVESANT and my familiarity with the government guaranteed debt market.

2. The bonds for the Tier II, Title XI guaranteed debt on the STUYVESANT were sold on September 6-8, 1977. They were purchased by nine institutional investors, and carry an interest rate of 7.95 percent per annum. Since that time, interest rates, including rates on this type of government guaranteed indebtedness, have increased. Since that time there has been an increase of between 10 and 15 basis points (.10 percent and .15 percent per annum) in the market for long term U.S. government securities.

3. Based on my familiarity with The Title XI debt market it is my opinion that in the event the transaction as presently constituted does not close September 30, 1977, the buyers would no longer consider themselves committed to the purchase. Assuming that Seatrain were immediately able to return to the market with these guaranteed securities, we would again have to request an offering period from the Maritime Administration. Recently we have had considerable difficulty in obtaining such a marketing period without significant delay because of existing scheduled commitments by the Maritime Administration to other Title XL [sic] issuers. Once a new initial offering date were established, a minimum of two weeks thereafter would be required prior to closing this transaction with the new purchasers.

4. It is the general commercial practice to receive a commitment from bond purchasers to purchase by a certain date. In the case of the STUYVESANT, the original closing date was September 21, 1977. However, a week before this scheduled closing date we obtained the purchasers approval for a delay in closing until September 23, 1977. Upon hearing of the need for a further last minute delay in closing because of the temporary restraining order, we again obtained the consent of the purchasers to a postponment [sic] in closing no later than September 30, 1977 although we were informed by counsel for the purchasers that in counsel's opinion the Purchase Agreement for these securities was then yet not legally binding.

It is our opinion that the remarketing of these government guaranteed securities would require a higher interest rate under current market conditions.

/s/ Robert M. Macy, Jr.
ROBERT M. MACY, JR.

STATE OF NEW YORK
ss.
COUNTY OF NEW YORK

Sworn before me this 26th day of September 1977.

/s/ Arthur S. Demarest
ARTHUR S. DEMAREST

NOTARY PUBLIC, State of New York
No. 41-0914365 Queens County
Certificate Filed in New York County
Term Expires March 30, 1979

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

MOTION TO DISSOLVE THE TEMPORARY RESTRAINING ORDER AND TO DISMISS

The federal Defendants, by their undersigned counsel, hereby move this Court to dissolve the Temporary Restraining Order previously entered herein, and to dismiss this action, on the grounds that (1) the complaint fails to state a claim upon which relief can be granted; and (2) that the plaintiff lack standing to prosecute this action.

In support of this motion, the Court is respectfully referred to in the Memorandum of Points and Authorities filed herewith.

Respectfully submitted,

/s/ Barbara Allen Babcock/RJS
BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
U.S. Attorney

/s/ Barbara O'Malley/RJS
BARBARA O'MALLEY

/s/ R. Joseph Sher
R. JOSEPH SHER

Attorneys
Department of Justice
Washington, D.C. 20530
(202) 739-4671

Of Counsel

/s/ Michael J. McMorrow
MICHAEL J. MCMORROW
Assistant General Counsel
Maritime Administration
U.S. Department of Commerce

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISSOLVE THE TEMPORARY RESTRAINING ORDER AND TO DISMISS

INTRODUCTION

The actions of the Secretary at issue before the Court are those taken on August 30, 1977. The first action was by the Maritime Subsidy Board, authorizing and agreeing to the total repayment of construction-differential subsidy (CDS) for the STUYVESANT. The second action was that of the Assistant Secretary for Maritime Affairs agreeing to a program of financial arrangements under Title XI of the Act with respect to that vessel.[1]

Plaintiffs' pleadings appear to enmesh and confuse two separate procedures undertaken by the Maritime Subsidy Board with respect to the repayment of CDS on the STUYVESANT. In the course of plaintiffs' dis-

[1] The defendants are usually referred to throughout as the "Secretary." Part II. D. discusses the Reorganization Plans which vest in the Secretary of Commerce the authority to administer the construction-differential subsidy program and the Title XI financing program. The Secretary, in turn, created the Maritime Subsidy Board and delegated to it her authority for the construction-differential subsidy program, and delegated to the Assistant Secretary for Maritime Affairs her authority for the Title XI financing program (Department Organization Order 10-8, Sections 5 and 6 and Section 3, respectively).

cussion of these two distinct procedures, erroneous statements of fact occur. The facts are set forth below:

In June 1977, Polk Tanker Corporation, the owner of the STUYVESANT, applied for permission to engage in domestic trade, namely, the transport of oil from Alaska to the "lower 48" States. The application was premised on the authority found in Section 207 of the Act. The applicant fully stated and recognized the limited application of Section 506 of the Act.[2] This application was published in the Federal Register, 42 F.R. 37229, July 20, 1977, and comments were invited from interested persons. The publication clearly indicated that the legal premise upon which the request had been made was Section 207 of the Act. No mention or indication exists that the notice was in any way connected with a separate regulatory scheme dealing with implementation of Section 506 of the Act.[3]

Plaintiffs allege improper proecdures in connection with processing of the action taken by the Maritime Subsidy Board on August 30, 1977. They point *only* to the regulations implementing Section 506 of the Act, and point to no statutory or other regulatory provision governing

[2] Section 506 of the Act (46 U.S.C. 1156) contemplates only a temporary transfer to the domestic trade of a CDS vessel.

[3] Plaintiffs, throughout their filings, have represented that the publication was made pursuant to those separate regulations, which representation is completely erroneous. The regulations, published at 42 FR 33035, June 29, 1977, clearly identify Section 506 of the Act and are designed in accordance with that statutory provision to cover vessels built with CDS which *temporarily* would be allowed into domestic trade. An application under those regulations covers a CDS vessel which will remain a CDS and for which no permanent relief from the restrictions attendant to being a CDS is sought. The case at hand, in contrast, arises apart from Section 506 of the Act and apart from those regulations which implement Section 506 of the Act. It is the Secretary's position that neither Section 506 of the Act nor those implementing regulations in any way apply to the action of the Maritime Subsidy Board taken on August 30, 1977.

the type of request acted upon, namely, the total payback of CDS on a particular vessel built with CDS subsidy. No such statutory or regulatory provision requires notice and comment or hearing in such an instance.

Once the Maritime Subsidy Board acted with respect to the total pay-back of CDS on the STUYVESANT, discretionary review of that action was possible under Department of Commerce regulations (46 C.F.R. Part 202). No such review is authorized regarding actions by the Assistant Secretary of Commerce for Maritime Affairs regarding Title XI financing. One of the plaintiffs in these actions, Shell Oil Company, petitioned the Secretary of Commerce to undertake review of the Maritime Subsidy Board action. Numerous filings were made by Shell Oil Company and other interested persons. The action of the Maritime Subsidy Board became administratively final for want of any action by the Secretary under the regulations.[4]

The need for urgent consideration by the Court is real and present. The financing as authorized by the Assistant Secretary for Maritime Affairs under Title XI of the Act cannot be undertaken until confirmation of the proprietary [sic] of the action taken by the Maritime Subsidy Board with respect to the payback of CDS. Title XI financing, itself, is extremely complex, involves numerous parties and will be reflected in a great number of interrelated financing documents. The key to the timing question is the continued availability of a private source of money to carry out the financing, General Electric

[4] In this regard, it is the Secretary's position that the Temporary Restraining Orders barred any *implementation* of the acts of the Maritime Subsidy Board, but did not toll that action becoming administratively final by operation of duly promulgated regulations. No step in terms of implementation of the Maritime Subsidy Board actions (or the Assistant Secretary's Title XI action) has been or will be taken while the Temporary Restraining Orders are outstanding and until this Court rules on the petitions for injunctive relief.

Credit Corporation. A number of private investors have been lined up to contribute over $31,000,000 in return for securities which are to be guaranteed, under Title XI of the Act, by the full faith and credit of the United States. The financial arrangements depend on delivery of the STUYVESANT to SOHIO under subcharter by September 30, 1977. If the transaction is not consummated on or before that date, the subcharter will fail and the entire financial arrangement will collapse. Seatrain has submitted affidavits explaining the urgency of consummating the arrangements in place and setting forth the extremely severe consequences should the arrangement fail.

The Secretary will show that all actions taken herein were within her lawful authority and that the plaintiffs herein lack standing to maintain this action. Consequently, there is no basis for injunctive relief, whether preliminary or final.

STATEMENT OF FACTS

On June 20, 1972, the Maritime Subsidy Board (the Board) and Polk Tanker Corporation (Polk) executed a contract under Title V of the Act, 46 U.S.C. section 1101 *et seq.*, providing for payment to Polk of a construction-differential subsidy (CDS) for the construction of the STUYVESANT. Polk agreed, pursuant to Section 506 of the Act, *inter alia*, to operate the STUYVESANT in the U.S. foreign trade. Shell Complaint, para. 21.

The CDS payment enjoyed by Polk under this contract amounted to $27,200,000. Affidavit of Robert Brown, attached to Intervenor-Defendant's Motion to Dismiss, paragraph 16 (hereinafter Brown Aff.).

In order to support the retention in service of the Seatrain shipyard, the former Brooklyn Navy Yard and to

provide employment and training for hard core unemployed persons in the area, the Secretary through the Economic Development Administration, has loaned directly and guaranteed private loans, to Seatrain funds to the approximate total of $70,000,000. Brown Aff. paras. 4, 7.

Additionally, construction loans were guaranteed by the Secretary under Title XI of the Act with respect to the STUYVESANT to the amount of $28,845,000. Brown Aff. para. 16.

As the STUYVESANT neared completion, Seatrain sought employment for it. However, due to the depressed state of the international tanker market, no employment was found. In 1976, Polk begain negotiations with Standard Oil Company of Ohio (SOHIO) with a view to employing the vessel in the Alaskan oil trade. Brown Aff. para. 9.

After agreement was reached, Polk, on July 8, 1977, sought a three-year waiver of its contractual obligation to employ the tanker in the foreign trade of the United States. Brown Aff. para. 13.

The application was published in the *Federal Register* on July 19, 1977, and numerous public comments were received. Polk then withdrew its application. Brown Aff. para. 13.

On August 25, 1977, Polk submitted a request to repay the CDS and sought approval of the sale transaction and the SOHIO charter. Brown Aff. paras. 14 and 15.

On August 30, 1977, such permission was granted by the Board, paving the way for the multi-faceted financial transaction which is the basis of the complaints herein. Brown Aff. para. 15-20.

ARGUMENT

1. THE SECRETARY OF COMMERCE HAS LAWFUL AUTHORITY TO TAKE THE ACTION WHEREBY THE CONSTRUCTION-DIFFERENTIAL SUBSIDY ON THE STUYVESANT WOULD BE REPAID IN FULL

The Secretary asserts that authority for the action permitting repayment of construction-differential subsidy in full is found primarily under Section 504 of the Act (46 U.S.C. 1154) and Section 1104(a)(3) of the Act (46 U.S.C. 1274(a)(3)), and in Reorganization Plans No. 21 of 1950, Section 105 (64 Stat. 1273, May 24, 1950) and No. 7 of 1961, Section 202(b)(1) (75 Stat. 840, August 12, 1961). Additionally, the Secretary relies on a Decision of the Comptroller General (44 Comp. Gen. 180 (1964)).

A. *Section 504 of the Act*

Section 504 of the Act reads as follows, in part:

> If a qualified purchaser under the terms of this title desires to purchase a vessel to be constructed in accordance with an application for construction-differential subsidy under this title, the Secretary of Commerce *may* . . . *contract* to pay only construction-differential subsidy and the cost of national defense features to the shipyard constructing such vessel. . . . (Emphasis added)

This section vests in the Secretary basic discretionary authority to enter into contracts for CDS and the cost of national defense features added on to commercial vessels. No limitation appears within this section, or elsewhere within Title V of the Act or elsewhere in the Act, which prevents amendment, modification or termination of a CDS contract. Once a CDS contract is entered into as

a discretionary matter by the Secretary, the normal contractual rights of each party apply, and the contracts are subject to further mutual agreement as to modification or termination.

B. *Section 1104(a)(3)*

Section 1104(a)(3) of the Act became law in 1972. It *expressly* permits Title XI financing of debt created for the purpose of paying back CDS on a vessel built with such subsidy. The operation and the scope of this provision of law will be discussed *infra*. However, the central and crucial point is that this section *confirms* that CDS may be paid back. It is also significant, as will be explained more fully below, that the authority created by Section 1104(a)(3) of the Act was *not exercised or used* in the shipyard transaction involving the STUYVESANT. Plaintiffs' representations to the contrary are in error.

The bill enacted in 1972 (H.R. 9756, 92nd Cong. 2d Sess.) was first introduced with the following pertinent text:

> Section 1104. (a) Pursuant to the authority granted under section 1103(a), the Secretary of Commerce, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—
>
> * * * *
>
> (3) Financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act, as amended, in order to release such vessel from all restrictions imposed as a result of the payment of such construction-differential subsidy, when such repayment is permitted by the Secretary of Commerce after considering the com-

petitive effect of releasing such vessel from such restrictions;

The section as finally enacted into law reads as follows:

> (3) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act, as amended;

The Department of Commerce endorsed the legislation. However, an amendment to the bill was recommended and explained in these words (House Report No. 92-688, 92nd Cong., 1st Sess., November 30, 1971, at page 17):

> This provision in Title XI does not in any way extend or affect the application of Title V of the Act. As drafted, the language of the bill would preclude the use of Title XI assistance from being available for repayment of construction-differential subsidy in cases where only a partial repayment is being made. This restriction is unnecessary, and that language should be modified accordingly.

That same Report, at pages 9-10, accepted the suggested change:

> Paragraph (3) is new. As introduced, the language of this paragraph would have permitted the Secretary of Commerce to guarantee an obligation which aids in financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy pursuant to Title V, "in order to release such vessel from all restrictions imposed as a result of the payment of such construction-differential subsidy, when such repayment is permitted by the Secretary of Commerce after considering the competitive effect of releasing such vessel from such restrictions. In the entire history of the administration of the 1936 Act, there has been only one instance where a construction-differential subsidy repayment, authorized by the Secretary under very special circumstances, could have called into play the provisions of this paragraph. Your Committee questions the desirability of general legislation to deal with such an unusual situation, and feels that Title XI assistance should be extended to all instances of subsidy repayments under Title V, so as to include the relatively frequent situation of repayments under the first sentence of section 506 of the Act. Your Committee has, therefore, amended the legislation by deleting the language quoted above. This paragraph in Title XI does not in any way extend or affect the application of Title V of the Act.[3]

Thus, Congress expressly sanctioned the principle of repayment of CDS and the concommitant expiration of restrictions imposed under section 506 of the Act. At the time, only one instance of a buy out had occurred. That instance is discussed *infra* part D. Congress not only included this rare instance, but expanded the provision to allow guarantee under Title XI of the more numerous partial repayments under section 506 of the Act. The language clearly indicates an awareness by the Congress of buy outs of CDS in two forms: the first being the partial buy outs specifically authorized in section 506 of the Act for *temporary* domestic service, and the second, totally distinct, a complete buy out apart from section 506 of the Act. The normal considerations in statutory construction, changes in bill texts, the wording as enacted into law, the legislative reports, the fact of later amendment within the same statute and legislative recognition of past administrative practice, compel the conclusion that the Secretary was invested with authority to agree to a complete buy out of CDS for the STUYVESANT.

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[3] *See also* Senate Report No. 92-1137, 92nd Cong., 2nd Sess., September 15, 1972, at page 9.

Plaintiffs place great reliance on the sentence "This paragraph in Title XI does not in any way extend or affect the application of Title V of the Act." It appears they wish that sentence to mean the direct opposite of the enacted law. The Secretary has shown that the two forms of CDS payback, one partial and one complete, are conclusively established by the above statutory analysis. The Secretary submits that the sentence in question was intended to preclude partial buyouts in excess of the strict six-month limit of section 506 of the Act. This interpretation permits both sections 506 and 1104 (a) (3) of the Act to operate as Congress intended. To accept plaintiffs' view would nullify the clear meaning of section 1104(a) (3). By all the familiar canons of statutory construction, that result should be avoided.

Therefore, this Court should find that the Secretary's action was within her authority under law.

C. *Reorganization Plans No. 21 of 1950 and No. 7 of 1961*

Reorganization Plan No. 21 of 1950, Section 105 transferred to the Federal Maritime Board (and now the Maritime Subsidy Board)

> (1) the functions with respect to making, amending, and terminating subsidy contracts, and with respect to conducting hearings and making determination antecedent to making, amending, and terminating subsidy contracts under the provisions of Titles V . . . of the Act. . . .

The terms "amending, and terminating subsidy contracts" and "under the provisions of Titles V" explicitly authorized the amendment and termination of CDS contracts. This function was transferred to the Secretary by Reorganization Plan No. 7 of 1961, Section 202(b) (1). The Secretary then delegated that same authority to the

Maritime Subsidy Board by an order now designated Department Organization Order 10-8, Section 6.01. Thus, the Reorganization Plans adopted pursuant to law after concurrence by the Congress of the United States explicitly support the investing of amendment and termination powers in the Maritime Subsidy Board with respect to CDS contracts under Title V of the Act.

In the matter of STUYVESANT, the Maritime Subsidy Board exercised this authority, not to terminate but only to amend the CDS contract. The CDS contract would survive in order that the United States might have the benefit of engineering and design data for building other vessels, as well as the right to purchase or requisition under Section 802 of the Act in time of war or national emergency.

D. *Decision of the Comptroller General*

Further authority for the action of the Secretary is found in the decision of the Comptroller General dated September 30, 1964 (B-155039, 44 Comp. Gen. 180). That case involved a request for concurrence by the Comptroller General in the view of the Secretary and the Maritime Subsidy Board that legal authority exists "to amend construction-differential subsidy contracts . . . so as to free the vessels from the restrictive provisions incorporated therein pursuant to section 506" of the Act. The Comptroller General analyzed the statutory development of section 506, distinguished the explicit authority for "temporary periods of domestic operations" and framed the basic issue as "whether an owner may accelerate his vessel's release from the section 506 restriction by prepayment of the unamortized balance of the Government's subsidy contribution." The Comptroller General analyzed the cost impact of construction-differential subsidy specifically in terms of its repayment. He concluded that the Secretary

> has the legal authority to amend the two [construction-differential subsidy] contracts involved to remove therefrom the section 506 provisions . . . upon repayment to the Government of the unamortized construction-differential subsidy paid by the Government for the reconversion of the two vessels.

This decision provides additional authority that amendment of CDS contracts in connection with total repayment of such subsidy is authorized by law. Plaintiffs' attempt to obscure this principle by distinguishing the factual situation before the Comptroller General from the factual situation involving the STUYVESANT. The Secretary submits that differing details do not obscure the basic principle at stake in this action, namely, that the Secretary may lawfully amend or terminate construction-differential subsidy contracts and accept full repayment of that subsidy.

The Maritime Subsidy Board publicly announced five separate actions over a period of a dozen years based on its lawful authority, apart from section 506 of the Act, allowing discretionary amendment or termination of CDS contracts concommitant with total payback of such subsidy.[4] There is no secret law or secret action bearing on this principle. There never has been.

Therefore, the Secretary's actions are fully authorized by law, and the complaints fail to state a claim in this respect.

[4] This Decision is the only published decision involving complete CDS buy out. The Maritime Subsidy Board has authorized three other total payback situations. No challenge or appeal or protest resulted from these public actions. See affidavit of James S. Dawson, Jr. attached hereto.

E. *The Secretary May Accept a Note in Full Satisfaction of an Agreement to Repay CDS*

In respect of her responsibilities under the Act, and "to protect, preserve or improve collateral" held by her, the Secretary may enter into such contracts as may in her discretion be necessary "in the same manner that a private corporation may contract within the scope of the authority conferred by its charter." (Section 207 of the Act, 46 U.S.C. 1117) It is clear that Congress, in adding this provision to the Act, wanted

> to make clear a power which it is thought already existed . . . but about which some doubt has been expressed under the Act . . . . [The Secretary] has all the general and implied powers of a business corporation. (H.R. Rep. No. 2168, 75th Cong., 3rd Sess. (1938))

Among the powers granted to the Secretary is the power to accept and to execute financial documents which are in common commercial usage.

One such document is a note in the form of an unconditional obligation to pay a sum certain. In the present case, as part of the total transaction under which the STUYVESANT was to be put in service, the Secretary accepted, in discharge of the obligation to repay the CDS, a note of Polk Tanker Corp., together with an assignment thereof from Polk to United States Trust Company of New York, a New York bank as owner trustee under a Trust Agreement between said Trust Company and GECC. (Copies of the note and the assignment, as yet unexecuted due to this Court's Temporary Restraining Order are attached hereto for the convenience of the Court.) Under these instruments, the obligation to repay the CDS is now on the trust formed by said Trust Agreement and is without recourse to Polk.

The effect of this transaction, under common commercial practice is to discharge the obligation. See Uniform Commercial Code, Section 3-802(1):

> . . . where an instrument is taken for an underlying obligation (a) the obligation is pro tanto discharged if a bank is the drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor . . .

Thus, in common commercial practice, which the Congress has authorized the Secretary to adopt, the acceptance of a note such as the one here in issue discharges the obligation. All that the Secretary has done is to conform to such practice.

Moreover, plaintiffs' challenge to this aspect of the transaction exalts form over substance. Had the note run from Polk to United States Trust Company of New York, supported by a guarantee under Section 1104(a)(3) of the Act, plaintiffs would have been in the same position in which they now find themselves. The Secretary, too, would have faced the same risks she does under the present form of the transaction. Therefore, plaintiffs have no cause to complain.

F. *Plaintiffs have not been denied due process of law*

To the extent that plaintiffs seek to challenge this transaction on due process grounds, contending that a lack of regulations disclosing the conditions under which relief of this type would be generally available denies them due process of law, their claim is without merit. As we have seen, *supra*, Congress declined to legislate hard and fast rules for this sort of transaction when enacting the present section 1104(a)(3) of the Act because of its extreme rarity, and because each such transaction is *sui generis*. The Secretary is not required to issue regulations which cover every eventuality which

may be conceivable. Moreover, plaintiffs have not sought such regulations, by petition for rulemaking to the Secretary or other means. Absent such an attempt, they cannot seek to invoke the power of this Court as to their complaint that no such regulations have been adopted.

Therefore, the plaintiff [sic] have failed to show any irreparable harm from the actions sought to be enjoined, and no injunction should be granted. Indeed, they have wholly failed to state a claim upon which relief may be granted, and this complaint should be dismissed. Rule 12(b)(6) F.R. Civ. P.

II. DEFENDANT ASSISTANT SECRETARY OF COMMERCE FOR MARITIME AFFAIRS ACTED WITHIN THE STATUTORY LIMITS OF TITLE XI OF THE ACT WHEN APPROVING THE FINANCING ARRANGEMENT

Contrary to Plaintiff's [sic] contentions, no action pursuant to Title XI of the Act was taken which could be considered a "double finance" of the construction-differential subsidy portion of the construction price of the STUYVESANT. Further, and again contrary to plaintiffs' contentions, no action pursuant to Title XI of the Act was taken to insure or guarantee financing costs in an amount exceeding limits set by that statute. The statutory limits are 75% of actual or depreciated cost for vessels built with construction-differential subsidy, and 87½% of vessels *not* built with such subsidy (46 U.S.C. 1244(b)(2)).

The financial transaction approved by the Assistant Secretary on August 30, 1977, is summarized as follows:

TITLE XI Financing

Vessel Cost; to Purchaser: General Electric Credit Corporation (GECC)	$120,000,000
Maritime Administration found Cost paid:	$102,758,000
Less Construction-Differential Subsidy	—$ 27,205,293
Net Cost Paid	$ 75,553,107
87½% of Actual Cost Paid	$ 66,108,000
Less Insured Bonds Outstanding	— 28,845,000
Maximum Title XI Guaranteed Bonds	$ 37,263,000
Title XI Bonds being issued	$ 31,355,000
Excess Equity	$ 5,908,000

The following outline summarizes the break-down of the GECC vessel cost indicated above:

Components of Financing for General Electric Credit Corporation

Vessel Cost:	$120,000,000	
Less Assumption of Outstanding Bonds Insured	— 28,845,000	(1st Tier Mortgage)
Under Title XI	91,155,000	
Less Bonds to be issued under	— 31,355,000	(2nd Tier Mortgage)
Title XI Guarantee	59,800,000	
Less Assumption of Polk Note to MarAd for Repayment of CDS	— 27,200,000	(3rd Tier Mortgage)
GECC Equity Investment	$ 32,600,000	

With respect to the $32,600,000, the money would be paid to Seatrain Shipbuilding Corp., which, in turn, would transfer that sum to its parent Seatrain Lines, Inc. for deposit into the Chase Manhattan Bank. Seatrain Corporation would issue to the General Electric Credit Corporation a guarantee of the charterhire performance by Queensway Tankers, Inc., which would be the bareboat charterer of the STUYVESANT to subcharter the vessel to SOHIO. The guarantee would be backed up by a letter of credit from the Chase Manhattan Bank (National Association) in the same amount of $32,600,000. The Chase Manhattan Bank would enjoy as security for the letter of credit, the full amount deposited by Seatrain Lines, Inc.

Insofar as concerns the $31,355,000 to be realized from issuance of the new bonds guaranteed under Title XI of the Act, $28,600,000 would be disbursed to The Chase Manhattan Bank (National Association) and Continental Illinois National Bank and Trust Company to pay off prior indebtedness which had been guaranteed by the Economic Development Administration. Thus, a potential liability to the Economic Development Administration will be erased. The remaining $2,755,000 to be realized from the new bonds would pay for the operating costs of the STUYVESANT to position it on the West Coast of the United States for performance of the charter to SOHIO in the transport of oil from the Trans-Alaskan Pipeline System.

The foregoing calculations conclusively establish (1) that the Secretary's obligations under Title XI of the Act do not exceed the limits set by law, and (2) that the construction-differential subsidy being repaid is *not* covered by the guarantee program under Title XI of the Act (as might have been lawfully authorized under 46 U.S.C. 1104(a)(3)). Further, the amount of the construction-differential subsidy being repaid was not in-

cluded in any calculation to arrive at the permissible dollar amounts entitled to coverage under Title XI of the Act. Therefore, there was no "double-financing" under Title XI, or any other provision of the Act, nor was the financing in excess of limits set by law. Accordingly, the plaintiffs can show no injury resulting from the entirely lawful transactions, and no injunctive relief is appropriate.

III. THE PLAINTIFFS LACK STANDING TO MAINTAIN THIS ACTION

It is a threshhold requirement upon all who seek to invoke the aid of the federal courts that they establish (1) that they have suffered an injury in fact as a result of the actions challenged and (2) that the injury in fact is related to the interests to be protected by the statute in question. *Association of Data Processing Service Organizations* v. *Camp*, 397 U.S. 150, 153 (1977); *Gifford-Hill and Co.* v. *FTC*, 523 F.2d 730, 731 and n.4 (D.C. Cir. 1975). The plaintiffs fail to meet either of these requirements.

A. *Plaintiffs Have Suffered No Injury In Fact*

The gravamen of the claims made by plaintiffs herein, Shell Oil Company, Alaska Bulk Carriers, Inc. and Trinidad Corporation, is that the entrance of the STUYVESANT into the Alaska oil trade will injure their competitive position in that trade. However, in their moving papers, plaintiffs disclose that in fact there is no such injury presently, or immediately in prospect.

Trinidad's tankers are presently under contract until June 1979 (affidavit of John J. Ervin, para. 3). Further, Trinidad has not alleged that subsequent to June 1979 any injury is reasonably in prospect, Ervin affidavit, para. 4) ("during the period from June 1979 through August 1980 Trinidad *may* fail to find employment. . . .").

Thus, Trinidad has shown no present or prospective injury in fact and lacks standing.

As to Alaska Bulk Carriers, it appears from plaintiffs' papers that the tanker fleet which they contend would be affected by the Secretary's actions herein, is presently under contract through 1980. To contend, as they do, that after 1980 their tankers will be in direct, lifelong competition with the STUYVESANT (affidavit of Larry F. Liddle, para. 17) is sheer speculation. Such speculation is insufficient to establish the injury in fact element of the standing requirement.

Shell Oil Company appears to contend that its injury consists of the absorption by the STUYVESANT of the only potential market for its vessels—the SOHIO subcharter (Shell complaint, para. 34). However, in order to establish that this absorption has injured Shell, it must be shown that Shell had sought to enter the market, that Shell has a vessel, or vessels, available to carry the tonnage, and that the actions of the Secretary or the intervenor-defendants resulted in the loss of this business.

None of these allegations appear in their complaints or supporting papers. Moreover, the *Request of SOHIO Petroleum Company for Denial of Request for Shell Oil Company for Review by the Secretary of Commerce of the Decision of the Maritime Subsidy Board*, dated September 15, 1977, and filed in the Administrative proceedings, indicates

> Shell is requesting for the term charter of its vessels charter rates that are at least 60-70% higher than market competitive rates for U.S. coastwise qualified vessels.

SOHIO request, page 3, para. 2 (copy attached for the convenience of the Court and parties). Thus, it would appear that far from the actions challenged in

this litigation being the cause of any injury to Shell, in fact, Shell's inability to secure employment for its vessels is a result of its failure to meet market prices.

In a recent case, *Public Citizen, et al.* v. *Lockheed Aircraft Corporation, et al.* No. 75-1958 (D.C. Cir. Aug. 25, 1977), the Court of Appeals had occasion to address the question of competitive injuries. The Court said

> An injury in fact need not be substantial to support Federal Court jurisdiction under this challenge to agency action; an identifiable trifle will suffice (Cit. omitted). The injury may be one which MDNA's members have already sustained or are immediately in danger of sustaining. *O'Shea* v. *Littleton,* 414 U.S. 488, 494 (1974). Nonetheless, the injury must be perceptible, concrete, specific, *U.S.* v. *SCRAP, supra at 689,* and real and immediate rather than conjectural or hypothetical. *California Bankers Association* v. *Shultz,* 416 U.S. 21, 69 (1974); *Golden* v. *Zwickler,* 394 U.S. 103, 108-10 (1969).

It is not necessary further to extend this argument and to burden the Court with extensive citations to establish this point. It is clear that plaintiffs have suffered no real concrete injury in fact.

Moreover, the affidavit of Russell F. Stryker, attached hereto, demonstrates that plaintiffs' fears of future competitive injury, even if adequately pleaded, are without substantial basis. Even with the STUYVESANT in the trade, there will be a major shortfall in available shipping capable of transporting Alaskan oil. Thus, when plaintiffs' vessels become available for charter, a market will exist in which they can compete.

As Plaintiffs have shown no injury in fact, immediate or prospective, they lack standing to maintain this action.

B. *Competitive Positions of Domestic Carriers are Not Within the Zone of Interests Protected by the Merchant Marine Act of 1936*

It has been held that the injury which forms the foundation for standing must be within the zone of interest protected by the statute whose violation forms the basis of a plaintiff's complaint. *Association of Data Processing Service Organizations, supra.; Gifford-Hill, supra; Barlow* v. *Collins,* 397 U.S. 159, 164-65 (1970). Recently the D.C. Circuit has observed that this test poses the single question: "whether the complaining party has stated an interest which is arguable from the face of the statute." *Tax Analysts and Advocates* v. *Blumenthal,* No. 75-1304 (D.C. Cir. June 15, 1977) Slip Op. at 21.

Should the Court determine, notwithstanding the argument set forth *supra,* part A, that plaintiffs have sufficient injury in fact to establish their standing, nonetheless their injury is not within the zone of interests protected by the Merchant Marine Act of 1936, as amended.

Congress and the courts have said that the purpose of the CDS program was to aid shipyards, not shipowners. H.R. Rep. No. 1073, 91st Cong., 2nd Sess. (1970), at page 30; *States Marine International Inc.* v. *Peterson,* 518 F.2d 1070 (D.C. Cir. 1975).

Moreover, Congress has, in the Jones Act (46 U.S.C. 883), extended competitive protection to the coastwise trade by limiting it to United States built and documented vessels. It is indisputable that the STUYVESANT is such a vessel. The Jones Act makes no mention of CDS.

At the completion of the transactions here at issue, the STUYVESANT will be in the same position as any other vessel built without CDS. Nothing in the Merchant Marine Act protects plaintiffs from competition from

such vessels. Thus, plaintiffs' competitive position is not within the zone of protected interests under the Act.

Therefore, plaintiffs lack standing and their complaints should be dismissed.

IV. THE ACTIONS OF THE SECRETARY SERVE THE PUBLIC INTEREST

The Secretary's actions complained of serve the public interest in several respects.

First, the STUYVESANT is needed to partially satisfy a deficit in available United States-flag vessels to transport the oil from the Trans-Alaskan Pipeline System to markets in the "lower 48" states. To the extent that vessel can help deliver a greater amount of needed oil to the American consumer, the public interest is well-served. Assuming, for the sake of argument, that plaintiffs are correct in saying that the presence of the STUYVESANT would tend to slightly lower shipping charges which might be demanded by plaintiffs when their vessels become available in future years, the lesser charges would reduce the cost of delivered oil and tend to lower prices for the consumer.

Second, the public interest would be adversely affected by forcing the STUYVESANT into lay-up. If the vessel is not gainfully employed, the risk appears that the outstanding bonds insured under Title XI of the Act will not be paid and the Secretary will redeem them. The new financial arrangements substantially increase the probability that the outstanding insured indebtedness will be repaid by the vessel's earnings. The new financial arrangements also give substantial grounds for concluding, as the Secretary has, that the additional indebtedness covered under Title XI of the Act will be repaid by the vessel's earnings. Prudent steps to avoid future demands upon Federal funds clearly is in the public interest.

Third, other Federal financial assistance, through the Economic Development Administration, also is supported and made more sound by the new financial arrangements. Immediately, over $28,000,000 in existing debt will be paid to banks and potential Federal exposure through guarantees issued by the Economic Development Administration will be erased. The remaining sums guaranteed by the Economic Development Administration will become more assured through several means: the escrowed $32,600,000 will bear interest and the total amount may be devoted to further retirement of guaranteed debt; and the sale of the STUYVESANT will remove continuing overhead costs and release more money for additional debt payment.

Fourth, the shipyard would have enhanced possibilities for remaining open and active. This serves two basic program objectives of the Secretary. With respect to the Economic Development Administration, the job training and employment of minorities in a severely depressed area will continue. With respect to the Maritime Administration, the availability of the working shipyard will contribute to fulfillment of a basic purpose of the Act, namely,

> It is necessary for the national defense and development of its foreign and domestic commerce that the United States have . . .
>
> *   *   *   *
>
> (e) . . . facilities for shipbuilding and ship repair. (46 U.S.C. 1101)

Plaintiffs have contended that the Secretary's determinations do not serve the public interest, and that enjoining any action under them is in the public interest. Thus, they seek to satisfy the last requirement of the test set forth in *Virginia Petroleum Jobbers* v. *FPC*, 259 F.2d 925 (D.C. Cir. 1958). However, their generalized contentions do not set forth any grounds for reversing

the Secretary's determinations and, as indicated by the foregoing, the public interest heavily favors the Secretary's actions herein.

Therefore, plaintiffs, having failed to establish any public interest ground for their position, are not entitled to the injunctive relief requested and their motions should be denied.

CONCLUSION

For all the foregoing reasons, plaintiffs' Motion for a Preliminary Injunction should be denied, and defendants' Motion to Dismiss should be granted.

Respectfully submitted,

/s/ Barbara Allen Babcock/RJS
BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

/s/ Barbara O'Malley/RJS
BARBARA O'MALLEY

/s/ R. Joseph Sher
R. JOSEPH SHER
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 739-4671

Of Counsel

Attorneys for Defendants

/s/ Michael J. McMorrow
MICHAEL J. MCMORROW
Assistant General Counsel
Maritime Administration
U.S. Department of Commerce

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF RUSSELL F. STRYKER

DISTRICT OF COLUMBIA) ss.

RUSSELL F. STRYKER being duly sworn, deposes and says that:

1. My name is Russell F. Stryker and I am employed by the Maritime Administration, an agency within the United States Department of Commerce. My official title is Assistant Administrator for Policy and Administration, which office I have held continuously since July 1, 1975. One of the units under my supervision is the Office of Policy and Plans which has been given the responsibility for analysis of tanker requirements for the United States and, in particular, the analysis of the tanker shipping requirements generated by the Trans-Alaskan Pipeline System. Prior to assuming my present office, I was Director, Office of Policy and Plans during the period January 2, 1974 - July 1, 1975. Prior to occupying this latter position, I was Staff Director, Transportation System Division in the Directorate for Transportation and Warehousing Policy, Office of the Deputy Assistant Secretary of Defense (Supply Maintenance and Services).

2. At my direction, and under my personal guidance, trained and experienced professional staff in the Office of Policy and Plans have analyzed the ocean-shipping requirements for domestic petroleum movements including,

but not limited to, the tanker requirements generated by the Trans-Alaskan Pipeline System. The information provided below summarizes the results of this analysis based on information currently available on expected pipeline throughput and data customarily collected by the Maritime Administration.

3. The Trans-Alaskan Pipeline System ocean shipping trades involve three distinct segments; first, trade between Alaska and Pacific Coast ports of the United States; second, trade between Alaska and transshipment points in the Republic of Panama or off-shore the Republic of Panama; and third, trade between such transshipment points through the Panama Canal to the Gulf Coast ports of the United States, and possibly Atlantic Coast ports of the United States. Controlling factors are: first, the physical limitations upon the size of vessels able to transit the Panama Canal; and, second, the transportation economies of larger vessels which dictate their use for long-haul trades if port facilities are available. In short, larger vessels are suitable for the trade between Alaska and transshipment points in the Republic of Panama or off-shore the Republic of Panama and are suitable for trade between Alaska and West Coast ports of the United States and smaller vessels are required for the trade transiting the Panama Canal. Although physical characteristics other than size were considered, the deadweight tonnage boundry between large and small tankers is approximately 50,000 DWT.

4. The calculation of tanker requirements depends on assumptions, of throughput of the Trans-Alaskan Pipeline System, consumption on the West Coast of the United States, and the availability of proposed pipelines to move oil from the West Coast of the United States to the central part of the United States. The following table indicates the assumed Trans-Alaskan Pipeline System throughput, the West Coast consumption and the re-

mainder required to be transported to the Gulf (or Atlantic) Coast of the United States:

BASIC ASSUMPTIONS

Year	Trans-Alaskan Pipeline System Throughput (Bbl/day)	West Coast Consumption (Bbl/day)	Surplus Shipped to Gulf Coast (Bbl/day)
1978.3	1,350,000	675,000	675,000
1980.1	1,500,000	750,000	750,000

It is assumed that the West Coast market may not be able to absorb more than approximately fifty percent (50%) of the Trans-Alaskan Pipeline System throughput and that proposed pipelines to move the surplus from the West Coast to the United States Gulf Coast or Middle West are not available in this period. This generates a corresponding requirement for ocean tanker shipment between Alaska and the Republic of Panama or off-shore the Republic of Panama for shipment through the Panama Canal to the United States Gulf Coast.

5. There are sufficient small tankers available to satisfy demand for transportation of Alaskan oil from the Republic of Panama or off-shore the Republic of Panama through the Panama Canal to the United States Gulf Coast. The following table shows these requirements and the available supply of small tonnage built with and without construction-differential subsidy:

SMALL TANKER DEMAND/SUPPLY BALANCE

		Supply	
Year	Demand (000 DWT)	Non-CDS (000 DWT)	CDS (000 DWT)
1978.2	1,188	1,227	376
1980.1	1,320	1,227	376

6. The large tanker requirements for use in the trade from Alaska to the West Coast ports of the United States

and the trade between Alaska and the Republic of Panama or off-shore the Republic of Panama are as follows:

LARGE TANKER DEMAND

Year	West Coast (000 DWT)	Panama (000 DWT)	Total Demand (000 DWT)
1978.3	1,244	3,008	4,252
1980.1	1,382	3,336	4,718

The supply estimates for these large tankers show a deficit in vessels *not* built with construction-differential subsidy, and this deficit can only be fulfilled by other United States-flag vessels drawn from the construction-differential subsidy fleet:

LARGE TANKER DEMAND/SUPPLY BALANCE

		Supply	
Year	Demand (000 DWT)	Non-CDS (000 DWT)	CDS (000 DWT)
1978.3	4,252	3,758	3,320
1980.1	4,718	4,548	3,376

7. The single and central conclusion from this analysis is that the deficit in available United States-flag vessels built without construction-differential subsidy in the trade between Alaska and the Republic of Panama or off-shore the Republic of Panama over the next three years is expected to be approximately five hundred thousand dead-weight tons (500,000 DWT). The entry of the STUYVESANT into this trade will *not* erase that deficit completely, but will fulfill approximately one-half of said deficit.

/s/ Russell F. Stryker
RUSSELL F. STRYKER

Subscribed to before me this 28th day of September 1977.

/s/ Anne M. Manning
Notary Public

My Commission expires:

April 14, 1979

[SEAL]

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF DENNIS BURGESS

Attached hereto is the original of the affidavit of Dennis Burgess executed September 28, 1977.

Respectfully submitted,

WILLIAMS & CONNOLLY

By /s/ John W. Vardaman, Jr.
JOHN W. VARDAMAN, JR.

By /s/ William E. McDaniels
WILLIAM E. MCDANIELS
1000 Hill Building
Washington, D.C. 20006
(202) 331-5000

COLES & GOERTNER

By /s/ Neal Michael Mayer
NEAL MICHAEL MAYER
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-5460

PRESTON, THORGRIMSON, ELLIS, HOLMAN & FLETCHER

By /s/ Johnathan Blank
JOHNATHAN BLANK
1776 F Street, N.W.
Washington, D.C. 20006
(202) 331-1005

AFFIDAVIT OF DENNIS BURGESS

STATE OF OHIO

COUNTY OF CUYAHOGA

I am Dennis Burgess and my position at Standard Oil of Ohio is Manager, Marine Chartering. I am personally familiar with the facts contained in the request of Standard Oil of Ohio for denial of the request by Shell Oil Company for review by the Secretary of Commerce of the decision of the Maritime Subsidy Board dated and filed September 15, 1977 and know the same to be true and accurate.

/s/ Dennis Burgess
DENNIS BURGESS

Subscribed and sworn to before me this 28th day of September, 1977

/s/ Kathleen Doyle
KATHLEEN DOYLE
Notary Public
State of Ohio
Cuya. Cty.

My Commission Expires May 3, 1981

[SEAL]

U.S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
MARITIME SUBSIDY BOARD

POLK TANKER CORPORATION
REPAYMENT OF CONSTRUCTION-DIFFERENTIAL SUBSIDY
OPERATION OF SUBSIDIZED VESSEL IN JONES ACT TRADE

REQUEST OF SOHIO PETROLEUM COMPANY FOR DENIAL OF REQUEST BY SHELL OIL COMPANY FOR REVIEW BY THE SECRETARY OF COMMERCE OF THE DECISION OF THE MARITIME SUBSIDY BOARD

WILLIAM J. WEBB
Attorney for Sohio
Petroleum Company
1723 Midland Building
Cleveland, Ohio 44115

Dated: September 15, 1977

I. THE DECISION OF THE BOARD

The subject of this Request for Review by the Secretary of Commerce is the decision of the Maritime Subsidy Board (the "Board"), dated August 30, 1977, authorizing (i) the repayment of the construction-differential subsidy ("CDS") paid by the Board to Polk Tanker

Corporation ("Polk") and its parent corporation, Seatrain Shipbuilding Corporation ("Seatrain") to aid in the construction of the T.T. STUYVESANT (the "Vessel") by delivery of a 20-year promissory note to the United States secured by a third preferred ship mortgage, and (ii) the immediate release of all trading restrictions pursuant to Title V, Merchant Marine Act, 1936, as amended (the "Act") thereby permitting the Vessel to engage in the domestic trade of the United States in direct competition with vessels constructed without the aid of subsidy.

II. THE INTEREST OF SOHIO PETROLEUM COMPANY

Sohio Petroleum Company ("Sohio") has agreed to time charter the T.T. STUYVESANT for a period of three (3) years commencing in September, 1977, providing the Vessel is eligible for U.S. coastwise trade during this period. The Vessel will be primarily utilized by Sohio to transport Alaskan North Slope crude oil from Valdez, Alaska, to other states. There is a shortage of readily available U.S. coastwise qualified vessels, and the need for such vessels will grow substantially when Pump Station Eight on the Trans Alaska Pipeline System ("TAPS") is recommissioned within the expected six to seven months. The utilizatioan of the T.T. STUYVESANT by Sohio will play an important role in Sohio's plans to transport North Slope crude oil from Alaska to other states and is necessary to insure the success of the TAPS operation.

III. GROUNDS FOR DENIAL OF THE REQUEST BY SHELL OIL COMPANY FOR REVIEW

Sohio believes that Secretary of Commerce should deny review of the Decision of the Maritime Subsidy Board for the following reasons:

1. Shell Oil Company ("Shell") failed to make its vessels available for time charter until well after Sohio had agreed to time charter the T.T. STUYVESANT.

Periodically during the past twelve months, Sohio has negotiated charters on a growing number of tankers for the Alaskan trade. This activity has been common knowledge within the industry, and Sohio has been approached by many owners of potentially available tonnage.

In September of 1976, Sohio was not chartering additional ships because of uncertainties at that time in the exact timing of the completion of TAPS and the completion of a West Coast to Mid-Continent pipeline system; both major factors in the requirements for tankers in the Alaskan Oil movement.

In the Spring of 1977, the timely completion of TAPS became a reality and the uncertainties associated with the timing of a West Coast to Mid-Continent pipeline system increased. Discussions with Shell at that time indicated an unwillingness on Shell's part to offer their ships on term charters. Sohio's negotiations for the T.T. STUYVESANT became public knowledge in May, 1977, and elicited no comments from Shell. In fact, Shell did not make an offering of its vessels until after the explosion and fire at Pump Station Eight.

2. Shell is requesting for the term charter of its vessels charter rates that are at least 60-70% higher than market competative [sic] rates for U.S. coastwise qualified vessels. Sohio believes that it would be unfair to review Shell's request when Shell has previously failed to make its vessels available and is doing so now only at charter rates that could be considered unconscionable.

IV. CONCLUSION

For the reasons stated above, Sohio respectfully requests that the Secretary deny the request of Shell Oil Company for review.

Respectfully submitted,

/s/ William J. Webb
WILLIAM J. WEBB
Attorney for Sohio
Petroleum Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused copies of the foregoing Request for Denial by the Secretary of Commerce to be served by hand delivery upon the Secretary of the Maritime Subsidy Board and upon H. Clayton Cook, Jr., Esq., attorney for Shell Oil Company.

Dated at Cleveland, Ohio, this 15th day of September, 1977.

/s/ William J. Webb
WILLIAM J. WEBB
Attorney for Sohio
Petroleum Company

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF JAMES S. DAWSON, JR.

District of Columbia) ss.:

JAMES S. DAWSON, JR., being duly sworn, deposes and says that:

1. My name is James S. Dawson, Jr. and I am employed in the Maritime Administration, an agency within the United States Department of Commerce. My official title is Secretary of the Maritime Administration and the Maritime Subsidy Board. I have served in this capacity since 1961. Among my other duties outlined in Maritime Administrative Order No. 12-1, is the responsibility to act as custodian of the records of official actions of the Maritime Subsidy Board and the Assistant Secretary for Maritime Affairs, who is the chief executive officer of the Maritime Administration.

2. Upon review of the records of the Maritime Subsidy Board, as well as on personal knowledge and belief, only five requests have been received by the Maritime Subsidy Board or its predecessor agencies from shipowners owning vessels built with construction-differential subsidy pursuant to Title V, the Merchant Marine Act, 1936, as amended (46 U.S.C. 1151-1161), for total repayment of said subsidy. Each of the said requests is identified below:

A. Grace Line, Incorporated requested the privilege of total repayment of construction-differential subsidy on the SSs SANTA ELIANA and LEONOR in 1964. Repayment was agreed to by the Maritime Subsidy Board and the shipowner but only after concurrence was obtained from the Comptroller General of the United States in his Decision B-155039 (44 Comp. Gen. 180, September 30, 1964).

B. Atlas Marine Company requested the privilege of repayment of construction-differential subsidy, at interest, on the SS AMERICAN HERITAGE in 1976. However, the shipowners only sought repayment privilege in the event that the Virgin Islands trade became domestic trade at some future date. The Maritime Subsidy Board in December 1976 agreed to the request and added an additional condition; namely, that the vessel would not be permitted to enter the Alaska oil trade.

C. Aquarius Marine Company requested the privilege of repayment of construction-differential subsidy, at inteerst, on the SS GOLDEN MONARCH in 1977. The terms were the same as in "B" above and approval was granted in March 1977.

D. Wilmington Trust Company requested the privilege of repayment of construction-differential subsidy on two liquid natural gas vessels during 1977. The vessels are being built and are not yet delivered for service in the LNG trade between Indonesia and Japan. Approval was granted in August 1977 and the Maritime Subsidy Board required interest payment.

E. Polk Tanker Corp. requested the privilege of repayment of construction-differential subsidy on the STUYVESANT in 1977. The Maritime Subsidy Board agreed to the repayment by action taken August 30, 1977. This action is the subject of the instant suit.

3. Upon review of the records of the Maritime Subsidy Board, as well as personal knowledge and belief, no

other requests for total repayment of construction-differential subsidy have been presented to the Maritime Subsidy Board or its predecessor agencies, and, therefore, no denials of such requests have, or could have, occurred.

4. The requests identified in paragraph 2 above, were not published in the *Federal Register* or otherwise, either to notify members of the public or to invite comment on said requests. The records of the Maritime Subsidy Board and the Maritime Administration contain no regulations requiring such publication, nor are any required by the Merchant Marine Act, 1936, as amended.

5. Upon review of the records of the Maritime Subsidy Board and the Maritime Administration, as well as personal knowledge and belief, literally scores of amendments to construction-differential subsidy contracts have been executed over the years. Requests from shipowners leading to said amendments to construction-differential subsidy contracts have not been published in the *Federal Register* or otherwise, either to notify the public or to invite comments by interested persons. No regulations have been issued by the Maritime Subsidy Board or Maritime Administration governing such requests, nor are any required by the Merchant Marine Act, 1936, as amended.

/s/ James S. Dawson, Jr.
JAMES S. DAWSON, JR.

Subscribed and sworn to before me this 28th day of September 1977.

/s/ Joan A. Bryan
NOTARY PUBLIC

My Commission Expires July 31, 1979

(SEAL)

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

[Filed Sep. 30, 1977, James F. Davey, Clerk]

ORDER

In accord with the accompanying Findings of Fact and Conclusions of Law entered in the above-captioned action on September 30, 1977,

IT IS HEREBY ORDERED

1. The Temporary Restraining Orders entered in the above-captioned action on September 22, 1977 are dissolved and the Findings of Fact and Conclusions of Law contained therein are set aside;

2. The plaintiffs' motions for preliminary injunction are DENIED;

3. The defendant-intervenors' motion to dismiss the complaint is DENIED WITHOUT PREJUDICE.

/s/ Charles R. Richey
CHARLES R. RICHEY
United States District Judge

September 30, 1977-1:25 p.m.

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

[Filed Sep. 30, 1977, James F. Davey, Clerk]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come before the Court on plaintiffs' Motions for Preliminary Injunction, upon consideration of the memoranda and affidavits in support thereof and in opposition thereto, the Court, having heard extensive argument on September 29, 1977, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. These are consolidated actions in which the plaintiffs, Shell Oil Company ("Shell"), Alaska Bulk Carriers, Inc. ("Alaska") and Trinidad Corporation ("Trinidad") challenge a series of actions by the Defendants Juanita M. Kreps, Secretary of Commerce; the Maritime Administration; Robert J. Blackwell, Assistant Secretary of Commerce for Maritime Affairs, and the three members of the Maritime Subsidy Board (hereinafter Secretary and/or designees). Seatrain Shipbuilding Corporation and Polk Tanker Corporation intervened as defendants.

2. On August 30, 1977, the Secretary and her designees took a series of actions which would permit the STUYVESANT, a tanker constructed for Intervenor Polk by Intervenor Seatrain Shipbuilding, to be relieved of restrictions contained in construction-differential subsidy contracts (CDS) with the Secretary which restricted the vessel's operation in the domestic trade.

3. The plaintiffs Shell, Alaska, and Trinidad are each either owners or charterers of tankers in the domestic trade. Plaintiff Trinidad owns five tankers outright and through a subsidiary has three others under charter. However, these vessels are all under charter until June 1979. Alaska Bulk Carriers has three tankers, all of which are under charter through 1980. Shell is the purchaser under a construction contract of two tankers scheduled for delivery in January 1978 and September 1978 respectively.

4. The construction of the STUYVESANT was financed in part by a $27.2 million construction-differential subsidy paid pursuant to Title V of the Merchant Marine Act, 1936, as amended 46 U.S.C. Section 1151 *et seq.*

5. By letter of August 25, 1977, Polk Tanker requested that the Secretary and her designees amend the CDS contract between them to permit Polk to repay the subsidy and obtain release from the contractual restrictions imposed pursuant to § 506 of the Merchant Marine Act, 1936, on operation in the domestic trade. Such action by the Secretary would permit the STUYVESANT to be time chartered to Standard Oil Company of Ohio (SOHIO) for use in the United States domestic trade to transport oil from Alaska and to be sold to United States Trust Company (USTC) as trustee for the equity owner, General Electric Credit Corporation (GECC).

6. On August 30, 1977, the Federal defendants granted Polk's request and approved a series of transactions relating to the sale, charter and use of the STUYVESANT in the domestic trade. Letters to Polk describing the actions taken August 30, 1977 were released August 31, 1977.

7. The closing on the transactions approved by the August 31, 1977 letters was scheduled for September 23, 1977.

8. On September 22, 1977, plaintiffs filed two lawsuits seeking temporary and permanent injunctive relief, challenging the actions taken by the Secretary and her designees on the grounds:

(1) The Secretary was without lawful authority to amend the CDS contract to permit repayment of the subsidy and removal of the trade restrictions;

(2) The Secretary was without lawful authority to accept repayment in the form of a promissory note payable in equal semi-annual installments over 20 years.

(3) The Secretary took her actions in an arbitrary and capricious manner, violative of due process.

Plaintiffs alleged they will suffer irreparable injury from these actions.

9. On September 22, 1977, the Court granted temporary restraining orders that enjoined the effectiveness of the Secretary's August 30, actions.

10. On September 29, this Court held a hearing on the plaintiffs' Motions for Preliminary Injunction.

11. The closing of the transaction involved in this case, scheduled for September 23 is now scheduled for September 30. That is a critical date for the parties.

12. Under the terms of the SOHIO Charter, Polk must deliver the vessel in Valdez, Alaska no later than September 30, 1977. The Court was advised that SOHIO could wait only until October 8, 1977 to commence loading the vessel. The equity purchaser, GECC, and the purchasers of the bonds in the amount of $31,355,000, essential to the sales completion, are committed only through September 30, 1977. The restructuring of the transaction by an-

other bond offering could not be accomplished between September 30 and October 8, 1977. The failure to restructure the transaction would result in substantial and irreparable injury to Polk and Seatrain.

CONCLUSIONS OF LAW

1. The plaintiffs have not sustained their burden to establish immediate and irreparable injury. Shell will suffer no irreparable injury until January of 1978, at the earliest. Alaska Bulk and Trinidad will suffer no irreparable injury until 1979, at the earliest. The plaintiffs failed to show that they will sustain any injury that cannot be corrected by the Court upon full consideration of this action on the merits.

2. The plaintiffs have not, upon the record before the Court at this time, proved a likelihood of success on the merits.

3. Granting preliminary injunctive relief at this time would subject the intervenors, and perhaps other parties not before the Court, to substantial and irreparable injury.

4. The actions of the Government officials charged with the responsibility of administering the CDS program on behalf of the public are entitled at this time to a presumption of regularity. On balance, after consideration of all of the equities, and based upon the record before the Court at this time, the Court finds that the public interest favors the denial of injunctive relief.

/s/ Charles R. Richey
CHARLES R. RICHEY
United States District Judge

September 30, 1977 1:25 p.m.

OPINION OF THE COMPTROLLER GENERAL

B-155039, 44 Comp. Gen. ——, September 30, 1964

[As reprinted in the Pike-Fisher looseleaf service. Editor's headnote omitted in printing.]

The Honorable
The Secretary of Commerce

Dear Mr. Secretary:

Reference is made to your letter of August 21, 1964, requesting to be advised whether we concur in the view of your Department that the Maritime Subsidy Board has the legal authority to amend construction-differential subsidy contracts Nos. FMB-89 and FMB-90 with the Grace Line, Incorporated, covering the S.S. SANTA ELIANA and the S.S. SANTA LEONOR, so as to free the vessels from the restrictive provisions incorporated therein pursuant to Section 506, Merchant Marine Act, 1936, as amended. We understand that the continuation of the contract provisions required by Sections 503 and 802 involving documentation under the laws of the United States and the Government's requisitioning authority are not involved.

It is reported that in 1958 the Federal Maritime Board granted to Grace Line, Incorporated, construction-differential subsidy aid for the conversion of the two vessels from cargo to container vessels; that certain difficulties have caused the Grace Line to conclude that these vessels cannot be operated successfully as originally intended; that the Grace Line proposes to sell these vessels to a domestic operator for operation in the domestic trade of the United States; and that the Grace Line has requested the amendment to the contracts to remove the Section 506 (Merchant Marine Act, 1936, as amended)

provisions requiring exclusive foreign-trade operation as therein provided. If such permission is granted the Grace Line will refund to the Government the unamortized subsidy paid by the Government in connection with the conversion of the vessels to container vessels.

Section 506, as originally enacted in 1936 (49 Stat. 1999), read as follows:

> "SEC. 506. *It shall be unlawful to operate any vessel, for the construction of which any subsidy has been paid pursuant to this title, other than exclusively in foreign trade*, or on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at an inland possession or island territory of the United States, *unless the owner of such vessel shall receive the written consent of the Commission so to operate and prior to such operation shall agree to pay to the Commission, upon such terms and conditions as the Commission may prescribe an amount which bears the same proportion to the construction subsidy theretofore paid or agreed to be paid (excluding cost of national-defense features as hereinbefore provided), as the remaining economic life of the vessel bears to its entire economic life.* If an emergency arises which, in the opinion of the Commission, warrants the *temporary* transfer of a vessel, for the construction of which any subsidy has been paid pursuant to this title, to service other than exclusive operation in foreign trade, the Commission may permit such transfer: Provided, that no operating-differential subsidy shall be paid during the duration of such temporary or emergency period, and such period *shall not exceed three months.* Every

contractor receiving a contract for a construction-differential subsidy under the provisions of this title shall agree that if the subsidized vessel engages in domestic trade on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or loads or discharges cargo or passengers at an island possession or island territory as permitted by this section, that the contractor will repay annually to the Commission that proportion of one-twentieth of such construction subsidy as the gross revenue of such protected trade bears to the gross revenue derived from the entire voyages completed during the preceding year." (Underlining added).

In the 1958 amendments to the Merchant Marine Act, 1936 (Public Law 705, 75th Congress, 3d Session), Section 506 was completely rewritten and as modified by Public Law 863 (1959) to add the words "the State of Hawaii" and Public Law 86-518 (1960) to extend the "economic life" of vessels from 20 to 25 years (except for liquid bulk carriers), reads as follows:

> "SEC. 506. Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Commission that proportion of one twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Commission may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Commission may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Commission, upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Commission as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period."

In explaining the 1958 amendment, the House Committee on Merchant Marine and Fisheries in its Report No. 2168 stated:

> "Section 506 deals with the services upon which vessels which have been built with a construction-differential subsidy may operate and provides for the repayment of proportions of the subsidy in case the vessel is used otherwise. The section has been entirely rewritten in order to remove ambiguities arising from the method of describing the services other than foreign. As rewritten the section clearly sets forth the obligation of the owner to use the vessel in foreign trade, and, if the vessel is operated in the domestic trade on certain definitely stated services, to repay certain proportions of the subsidy. If the vessel is used, with the consent of the Com-

mission, in the domestic trade in services other than those enumerated, *the obligations of the owner to repay part of the subsidy are clearly defined.*

"*No fundamental change in the original purpose of the section has been effected.*" (Underscoring supplied.)

The Committee on Commerce in reporting on the amended language of Section 506, stated (S. Report No. 1618-75th Congress, 3d Session):

"Section 506 has been entirely rewritten *to remove ambiguities and confusion.*

"This section now makes it unlawful for the owner of any vessel on which a construction-differential subsidy has been paid to operate it, without the written consent of the Commission other than exclusively in foreign trade or in other enumerated voyages to foreign ports which may include domestic ports. When an emergency arises which, in the opinion of the Commission, warrants the temporary transfer of such a vessel to domestic trade, the Commission may permit the transfer. No operating-differential subsidy shall be paid during an emergency period, which shall not exceed 3 months. These provisions are definite. The section further provides, however, that in the event the owner operates a vessel on which a construction-differential subsidy has been paid in services other than those which are not unlawful, he shall repay to the Commission a prescribed portion of the construction-differential subsidy. *It is very difficult to determine whether or not these instances in which repayment is required are restricted to the cases of emergency and to periods of 3 months.*

"*As the section is rewritten, it is perfectly clear that unless the owner operates exclusively in foreign trade, he must repay a portion of the construction-differential subsidy for any service in which the vessel is engaged which includes domestic ports enroute to or from foreign ports, as specifically described.* It is further provided that the Commission may consent in writing to the temporary transfer of such a vessel to services other than those enumerated for periods not exceeding 6 months in any year whenever the Commission may determine that such transfer is necessary. When such consent is given, it must be conditioned upon the owner's agreement to repay a specified portion of the construction-differential subsidy. No operating-differential subsidy shall be paid during the temporary period.

"It is believed that the section, as rewritten, will result in improved administration and will protect the interests of the Government and those of the carriers, both foreign and domestic." (Underscoring supplied.)

Section 506 was further amended by Public Law 88-225 (1963) to add the following contract amendment provision:

"Provisions in such contracts affecting vessels covered by this Act providing for refund of construction-differential subsidy for domestic operations under Section 506 of the Merchant Marine Act, 1936, and costs of national defense features for commercial use shall be amended so that for such refund payments made for the period after December 31, 1959, the base upon which such refund payments are computed annually thereafter shall be the undepreciated amount of subsidy or the national defense feature, as the case may be, as at December 31, 1959, divided by the years of life of the vessels as provided under this Act, remaining after December 31, 1959."

The effect of this amendment was to provide the same formula for refund of subsidy under Section 506 that had

previously been provided for under other sections of the 1936 Act.

During the hearings before the Merchant Marine and Fisheries Subcommittee of the Senate Commerce Committee and the Merchant Marine Subcommittee of the House Merchant Marine and Fisheries Committee on identical bills S. 1172 and HR 6813 (which became Public Law 88-225) the Maritime Administrator, Mr. Alexander, stated (p. 59 of Senate Hearing and p. 118 of the House Hearings):

> "We also believe that the obligation to repay construction-differential subsidy for operation in domestic trade was intended to be, and should be, terminated at the end of the economic lives of the vessels."

As introduced S. 1172 and HR 6813 contained a Section 2 which would have expressly provided for the termination of the obligation to repay construction-differential subsidy for operation in domestic trade at the end of the vessel's statutory life. On August 30, 1963, the Senate Commerce Committee favorably reported S. 1172 to the Senate with an amendment that would delete Section 2 of the bill. The Senate agreed to this amendment and on October 7, 1963, enacted the bill so amended. In the debate on the bill Senator Magnuson gave the following explanation of Committee amendments (Congressional Record, p. 17797):

> "Let me say further that the report language on page 3 as to the elimination of Section 2 of the bill has reference to the fact that the Committee understands that the formula prescribed in Section I of the bill would by its application complete the statutory life cycle of the vessel and there would be no more refunds of construction subsidy for domestic operation after that cycle is completed."

In a report dated December 10, 1963, to the House Merchant Marine and Fisheries Committee on S. 1172 as it passed the Senate, the Department of Commerce recited the foregoing legislative history of S. 1172 in the Senate. On December 12, 1963, the House Marine and Fisheries Committee favorably reported S. 1172 to the House without mentioning the legislative history of the bill in the Senate but included the Department of Commerce report of December 10, 1963, to the Committee on S. 1172 as it passed the Senate. The House passed the bill on December 17, 1963.

The foregoing portion of the legislative history of Section 506 demonstrates that the Congress intended to clarify the domestic services which were authorized and to remove any question of authority for temporary periods of domestic operations, all of which would require repayment of subsidy. Furthermore, it appears clear that the requirement for repayment of construction-differential subsidy for domestic operation would cease when a vessel reaches the end of its statutory life period. The question then arises whether an owner may accelerate his vessel's release from the Section 506 restrictions by repayment of the unamortized balance of the Government's subsidy contribution.

Under the law an American operator in the domestic service is required to build his ship in an American shipyard and is required to pay the full domestic price of his ship. An operator, aided with a Title V construction-differential subsidy, secures his ship at a cost equivalent to a foreign price (domestic price less the subsidy granted by the Government) and, as a result thereof the operator is required by Section 506 to, in effect, pay the domestic price if the ship is operated in the domestic trade. This is accomplished by a repayment to the Government of the subsidy applicable to that proportion of the vessel's statutory life during which it is operated in the domestic

trades. Upon the basis of the rationale for the repayment of subsidy, it appears that if the Government receives the full benefit of its subsidy by the owner's operations in the foreign trade and the compliance with the other construction-differential subsidy contract obligations for the statutory life of the vessel, or if, in the case of a vessel which has not reached the end of its statutory life, the unamortized subsidy is repaid to the Government, the owner should be in the same position as if he had paid the full domestic price of the vessel; that is, he should not be required to make further repayments and should not be bound to operate the vessel exclusively in foreign trade. This conclusion appears amply supported by the above-quoted portions of Senate Report No. 1618, 75th Congress, 3d Session, and that the repayment of unamortized subsidy will protect the interests of the Government and those of the carriers, both foreign and domestic.

In view of the foregoing, we concur in the view of your Department that the Maritime Subsidy Board has the legal authority to amend the two contracts involved to remove therefrom the Section 506 provisions as requested by Grace Line, Incorporated, upon repayment to the Government of the unamortized construction-differential subsidy paid by the Government for the reconversion of the two vessels.

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF CHARLES E. DUNAGAN

District of Columbia: SS

I, Charles E. Dunagan, being duly sworn, depose and say,

1. My name is Charles E. Dunagan. I am Manager, Marine Affreightment, Transportation and Distribution Department, Shell Oil Company, Two Shell Plaza, Houston, Texas.

2. My employment with Shell involves the formulation and implementation of corporate plans necessary to provide marine transportation for Shell Oil Company.

3. In the course of my employment, I have been personally involved in the decision to build two unsubsidized 188,500 deadweight ton ("dwt") oil tankers for the Alaskan oil trade and in negotiations to find employment for these two vessels.

4. On February 28, 1975 Shell entered into a contract with National Steel and Shipbuilding Company, San Diego, California ("NASSCO") for the construction of two 188,500 dwt San Diego class tankers. Prior to executing this contract, Shell personnel conducted an exhaustive study of tanker supply and demand in the Alaskan oil trade. This study demonstrated that between 1977 and 1982, projected Alaskan oil production

on the North Slope would create a demand for transportation which could not be met by the unsubsidized tanker fleet which would be available.

5. The Board of Directors of Shell Oil Company, on February 27, 1975, adopted a resolution approving the NASSCO contract. The preamble to this resolution stated "[The Company's feasibility] studies assume that the company will need transportation of approximately 180,000 B/D of North Slope Crude for its West Coast refineries; but even if that total need does not materialize, the forecast of tanker rates for other Alaskan vessels is high relative to the freighting level of these tankers, which maximizes the probability of their satisfactory alternate employment." A true and correct copy of the text of the February 27, 1975 preamble and resolution is attached hereto as Exhibit A.

6. The two Shell vessels can be profitably used only in the Alaskan oil trade. There is no demand for oil tankers of 188,500 dwt in the domestic trade except in the Alaskan oil trade. The vessels can not be used economically in the foreign trade because they were not built with government subsidy.

7. Based on present data as to projected Alaskan crude production, projected West Coast crude consumption, and unsubsidized tanker vessels now in service and under construction, the demand for oil tanker tonnage in the Alaskan oil trade for the years 1977 to 1980, inclusive, should approximately equal supply.

8. I have reviewed the Affidavit of Russel F. Stryker, filed in this action on September 30, 1977. The affidavit predicts that there will be a deficit of 500,000 dwt in available United States-flag vessels built without construction-differential subsidy in the trade between Alaska and the Panama Canal over the next three years.

9. The predicted deficit is based on assumptions by Mr. Stryker as to West Coast crude surplus which are inconsistent with official estimates of the Federal Energy Administration and the President of the United States. The Stryker affidavit, at ¶ 7, predicts a West Coast crude surplus of 675,000 barrels per day ("Bbl/d") in 1978.3 and 750,000 Bbl/d in 1980.1. By contrast, a Commerce Department publication of October 1976 entitled "The U.S.-Flag Tanker Fleet and Domestic Tanker Requirements" predicts, at page 6, that West Coast surplus in 1978.2 will be 500,000 Bbl/d and in 1980.1 will be 650,-000 Bbl/d. These predictions were supplied to the Department of Commerce by the Federal Energy Administration ("FEA"). More recent FEA data confirms the 1976 predictions. A report entitled "Equitable Sharing of North Slope Crude Oil," published by FEA in April, 1977, predicts, at page 13, that West Coast surplus in 1978 and 1979 will be 400,000-500,000 Bbl/d and 385,000-485,000 Bbl/d respectively. This report is attached hereto as Exhibit B. In his April 15, 1977, "Report to Congress on the Pricing of Alaskan North Slope Crude Oil" President Carter, at page 25, predicts West Coast surplus to be 400,000 Bbl/d in 1979. This report is attached hereto as Exhibit C. The following chart summarizes this data:

Source	Date	West Coast Consumption (Bbl/d)	Surplus Shipped to Gulf Coast (Bbl/d)
Stryker	1978.3	675,000	675,000
	1980.1	750,000	750,000
FEA/Commerce	1978.2	850,000	500,000
1976	1980.1	850,000	650,000
FEA 1977	1978	950,000-850,000	400,000-500,000
	1979	955,000-855,000	385,000-485,000
President 1977	1979	800,000	400,000

10. Inflation of the surplus to be shipped to the Panama Canal inflates the demand for tonnage since the trip

from Valdez, Alaska to the Canal is approximately twice as long as the trip to California. If the tonnage demand figures in the Stryker affidavit for the West Coast and Panama Canal shown in paragraph 6 are each multiplied by a fraction composed of the 1976 FEA/Commerce crude volume figures as numerator and the Stryker crude volume figures as denominator, the result is the demand for tankers, based on the Stryker formula for converting crude volume to tonnage and on the FEA surplus instead of the Stryker surplus. This result shows that demand is virtually equal to unsubsidized supply. This is illustrated by the following computations:

1. 1978.3
Demand (000 dwt)

West Coast: $1{,}244 \times \frac{850{,}000}{675{,}000} = 1{,}567$

Panama Canal: $3{,}008 \times \frac{500{,}000}{675{,}000} = 2{,}228$

Total: 3,795

Tonnage Supply (non CDS) (000 dwt): 3,758
(includes Shell vessels)

Surplus Demand (000 dwt): 37

2. 1980.1
Demand (000 dwt):

West Coast: $1{,}382 \times \frac{850{,}000}{750{,}000} = 1{,}566$

Panama Canal: $3{,}336 \times \frac{650{,}000}{750{,}000} = 2{,}891$

Total: 4,457

Tonnage Supply (000 dwt): 4,548
(non CDS)
(includes Shell vessels)

Surplus Demand (000 dwt) —91

11. Based on projected vessel construction, existing vessels, existing charters, and projected crude production, all Alaskan North Slope crude has transportation through

1980, except for a portion of the crude production owned by SOHIO. Atlantic Richfield Company ("ARCO") and Exxon Corporation ("Exxon"), each of which owns approximately 20 percent of Alaskan crude, can basically meet their respective needs for transportation during the next three to five years through the use of unsubsidized vessels currently owned, under construction, or chartered. SOHIO, however, which owns the remaining 60 percent of Alaskan crude, does not have sufficient transportation to move its entire production over the next three to five years. At least one vessel of the Shell size must be added during the next three to five years if all the SOHIO crude is to be moved.

12. Shell has offered its vessels for sale and/or charter to SOHIO, ARCO and Exxon. Offers to begin negotiations were made to each of these firms in the fall of 1976, January, 1977, and in the fall of 1976, respectively. On August 4, 1977, a firm offer was made to SOHIO to charter the two vessels. On August 5, 1977, a firm offer was made to SOHIO to charter one vessel for two or three years. The charter rate offered was \$9.00 dwt/month for the first year of a three-year charter and \$9.50 dwt/month for the first year of a two-year charter, each with yearly escalations thereafter.

13. The rate offered on August 5 is considerably less than rates paid by SOHIO, ARCO and Exxon to charter other unsubsidized vessels in the Alaskan oil trade. Charter rates in this trade range as high as \$15.00 dwt/month. A graph illustrating existing charter rates is attached hereto as Exhibit D.

14. The rate of return earned by Shell from a charter at \$9.50 dwt/month is well below that earned from other existing time charters of unsubsidized vessels. A graph illustrating existing rates of return is attached hereto as Exhibit E. On this scatter diagram, the return

on capital ranges from about 6% to somewhat more than 30%. The NASSCO 91s chartered to SOHIO are about 12% return on capital, the PRINCE WILLIAM SOUND also charter to SOHIO is about 13%, the AMERICAN SUN is fixed to EXXON for a return of about 26% and the SHELL offer to SOHIO is in the 13% range or on the lower side of the 6 to 30% spread.

15. Further affiant sayeth not.

/s/ Charles E. Dunagan
CHARLES E. DUNAGAN

Subscribed before me this 12th day of October, 1977.

/s/ [Illegible]
Notary Public

My Commission expires:
[Illegible]

ACQUISITION OF TANKERS FOR TRANSPORTATION OF ALASKAN CRUDE OIL

The Chairman referred to previous discussions with the Board of the Company's prospective acquisition of the services of two tankers to transport crude oil from Valdez, Alaska to West Coast refineries; and he called on Mr. St. Clair to report on current developments.

Mr. St. Clair said that the Company's feasibility studies indicate that the most economical tankers for the Alaskan crude oil trade are those of 150,000/200,000 DWT cargo capacity, and that such tankers ordered now for new building can be delivered coincident with the estimated opening of the Alyeska Pipeline in late 1977 or early 1978. Those studies assume that the Company will need transportation of approximately 180,000 B/D of North Slope Crude for its West Coast refineries; but even if that total need does not materialize, the forecast of tanker rates for other Alaskan vessels is high relative to the freighting level of these tankers, which maximizes the probability of their satisfactory alternate employment.

Based on these considerations, the Company has negotiated with various shipbuilders; has selected, as the best prospective builder, National Steel and Shipbuilding Company at San Diego; and has developed a contract with that Company, captioned "Contract for Construction of Two (2) SAN DIEGO Class 190,000 DWT Tankers for Shell Oil Company", and dated February 28, 1975. Presenting that Contract to the meeting, Mr. St. Clair advised that it has been carefully reviewed by the Company's Transportation and Supplies, Purchasing and General Services and Legal Departments, and is deemed

by them to be, in both substance and form, satisfactory to the Company.

The base prices of the tankers, as specified in the Contract, are $68,840,000 and $65,933,000, respectively. Each of those prices is subject to upward adjustment by approximately $2,700,000 for modifications of the plans and specifications yet to be requested by the Company, and also to escalation with the Contractor's costs of labor, steel and other materials. Allowing an additional $6,000,000 for each tanker for construction supervision, initial stores and contingencies, the estimated delivered costs of the tankers are $90,400,000 and $87,500,000, respectively.

Since the tankers will have to be documented under United States laws for its coastwise trade, each of them will eventually be delivered to and owned by a party nominated by the Company, which will be a United States citizen under those laws, and will commit the tanker to Shell's service under an appropriate charter party. The various available options for financing these tankers are under study to determine which will be most advantageous to the Company.

After Mr. St. Clair concluded his report with the recommendation that the proposed Contract for acquisition of the tankers be authorized, the Chairman endorsed that recommendation; and the ensuing discussion eventuated in unanimous adoption of the following resolution:

> RESOLVED, That the Company is hereby authorized to enter into—and any Vice President of the Company is hereby authorized to execute and deliver, in the Company's name and behalf—a Contract with National Steel and Shipbuilding Company for its construction for the Company of two SAN DIEGO Class tankers of approximately 190,000 DWT each, in substantially the form of such Contract presented to this meeting, with any modifications thereof having the approval of the Company's executing Vice President (whose approval thereof shall be conclusively evidenced by his execution of the Contract).

[SEAL]

EQUITABLE SHARING OF NORTH SLOPE CRUDE OIL

A Study Requested by Congress
in Section 18 of the Alaska
Natural Gas Transportation Act

April 1977

FEA/G-77-137

FEDERAL ENERGY ADMINISTRATION

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OFFICE OF OIL AND GAS
FEDERAL ENERGY ADMINISTRATION

TABLE OF CONTENTS

[Page Numbers Omitted in Printing]

[Page Numbers Omitted in Printing]

[Page Numbers Omitted in Printing]

[Page Numbers Omitted in Printing]

[Page Numbers Omitted in Printing]

EXECUTIVE SUMMARY

This report has been prepared in response to Section 18 of the Alaska Natural Gas Transportation Act of 1976. That section requires the President to report to the Congress, within 6 months of the date of its enactment, on (1) "what special expediting procedures are necessary to ensure the equitable allocation of [Alaskan] North Slope crude oil to the Northern Tier States . . . to carry out the provisions of Section 410 of Public Law 93-153 . . .," (2) "the specific provisions of law which the President finds would inhibit the expeditious construction of an oil delivery system to the Northern Tier States . . .," and (3) "what effect such a delivery system will have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports."

Background

In July 1977, crude oil production from the Alaskan North Slope will begin to be shipped to the port of Valdez, Alaska, through the Trans-Alaska Pipeline. The initial throughput will be absorbed on the West Coast of the United States. Beginning perhaps as early as November 1977, the quantity available will likely exceed the requirements of West Coast refineries.

A number of distribution alternatives, both short and long term, have been proposed for the disposition of North Slope crude oil. Section 410 of the Trans-Alaska Pipeline Authorization Act requires the President to use his authority to ensure an "equitable allocation" of available North Slope and other crude resources and petroleum products "directly or indirectly" among "all regions and all of the several States."

This report examines both the short- and long-term alternatives for the disposition of Alaskan oil, to deter-

mine generally if the purpose of Section 410 will be served by those systems, and particularly whether such purposes will be served with respect to the Northern Tier States, in which a number of refineries are being affected by the phase-out of crude oil exports ordered by the government of Canada.

Conclusions

Based upon the analysis contained in this report, the following conclusions have been drawn:

• Any of the several long-term pipeline proposals which contemplate shipment of Alaskan North Slope crude oil to pipeline distribution centers east of the Rocky Mountains could benefit all sections of the Nation, including at least a portion of the Northern Tier States.

• The distribution of Alaskan North Slope crude oil to Gulf Coast refineries will help to reduce the dependence of New England and the Middle Atlantic States on imported oil.

• The Federal Government, in response to Section 18 of the Alaska Natural Gas Transportation Act, is taking those steps necessary to expedite construction of permanent delivery systems for North Slope crude oil.

• There are significant environmental issues involved in all the the [sic] pipeline delivery proposals which require additional time for analysis and resolution by the Federal Governments of the United States and Canada and the various States that would be transited. With proper management and coordination, existing law and procedures will allow for thorough review of the environmental issues in a reasonably expeditious manner.

• This report cannot fully address the short-term situation regarding the delivery of crude oil to the Northern Tier States. Canadian crude oil export policy is under

review and an FEA assessment will be completed and presented to the Congress when the Canadian policy is clarified.

• Based upon what is currently known about Canadian export policy, there are available alternatives for the distribution of North Slope crude oil and for providing supplies of crude oil to the Northern Tier States for a period of time sufficient to analyze and resolve the issues surrounding the long-term proposals.

I. *Legislative Background and Introduction*

Section 18 of the Alaska Natural Gas Transportation Act of 1976 (ANGTA), enacted on October 22, 1976, provides that, within 6 months of enactment, the President must report to the Congress on the following matters:

(1) "what special expediting procedures are necessary to insure the equitable allocation of North Slope crude oil to the Northern Tier States of Washington, Oregon, Idaho, Montana, North Dakota, Minnesota, Michigan, Wisconsin, Illinois, Indiana, and Ohio . . . to carry out the provisions of Section 410 of Public Law 93-153 . . . [the Trans-Alaska Pipeline Authorization Act];"

(2) "the specific provisions of law, which relate to any determinations of a Federal officer or agency as to whether to issue or grant a certificate, permit, right-of-way, lease, or other authorization in connection with the construction of an oil delivery system serving the Northern Tier States and which the President finds would inhibit the expeditious construction of such a system in the contiguous States of the United States . . . ;" and,

(3) "the impact that the delivery system will have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports."

The section also contains a mandate that all Federal officers and agencies shall "expedite to the fullest practicable extent all applications and requests for action made with respect to such an oil delivery system."

Public Law 93-153, referred to in Section 18, authorized the construction of the Trans-Alaskan Pipeline System (TAPS). Section 410 thereof states:

> "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to ensure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several States."

The apparent intent of Section 18 of the ANGTA is to require the President to insure that the purposes of Section 410 of P. L. 93-153 will be satisfied as delivery systems are developed to distribute North Slope crude oil, and report to the Congress on what special expediting procedures are necessary to ensure that these purposes will be met with respect to the Northern Tier States in particular.[1] Thus, to satisfy the requirements

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[1] An indication of Congressional intent with regard to the purpose of Section 18 is contained in the following exchange during the debate on the ANGTA (*Congressional Record* of October 1, 1976, page S17729).

"Mr. Stevens . . . It is my understanding that Section 18 is not a directive or command to any Federal officer or agency, but rather, expresses the sense of the Congress that administrative action should be taken expeditiously to help alleviate the forthcoming west coast crude oil surplus. It is also my

of Section 410, these delivery systems must ensure that the benefits of North Slope crude oil will be "equitably shared, directly or indirectly, by all regions of the country."

To comply with the requirements of Section 18, therefore, the President must (1) determine whether the systems currently planned or under consideration for delivery of North Slope crude oil to the contiguous United States satisfy the requirement that the benefits of such crude oil be equitably shared, directly or indirectly, by all regions of the country, including particularly the Northern Tier States; (2) identify the provisions of Federal law related to the issuance of certificates, leases, rights-of-way, permits or other authorizations in connection with delivery systems planned for construction in the contiguous United States, which are intended, directly or indirectly, to serve the Northern Tier States, and determine if such provisions will inhibit the expeditious construction of such systems; (3) determine what, if any, special expediting procedures with respect to the permitting process are necessary to insure that the Northern Tier States equitably share, directly or indirectly, in the benefits of North Slope crude

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understanding that this section does not express a congressional preference for any particular pipeline route. I would ask the gentleman if my understanding is correct.

Mr. Stevenson . . . The Senator from Alaska is indeed correct in his understanding of Section 18. Section 18 is merely a reaffirmation of the sense of the Congress expressed in Section 410 of Public Law 93-153, that either directly or indirectly the benefits of North Slope crude oil should be shared equitably by all regions of the country. Whatever pipeline route or routes are ultimately utilized to transport North Slope crude oil from the West Coast. Section 18 expresses the will of Congress that Federal administrative actions, within the context of existing laws, be taken expeditiously to permit crude oil to be transported from the West Coast to other points in the United States."

oil; (4) determine the impact that such delivery systems will have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports; (5) insure that all Federal officers and agencies expedite to the fullest extent practicable all applications and requests for action made with respect to systems; and (6) report his findings with respect to items (1) through (4) above to the Congress.

This Report documents these findings.

II. *Background*

Production of crude oil from the Alaskan North Slope, which contains about one-third of the Nation's total proven oil reserves, will begin to flow to U.S. refineries in the summer of 1977. Initial production will be from the main Prudhoe Bay field. By January 1, 1978, TAPS will carry 1.2 million B/D (barrels per day) of crude oil from Prudhoe Bay to the port of Valdez, on the southern coast of Alaska. During the early 1980's, this amount may be increased to 1.6 million B/D and, if further major discoveries are made on the North Slope, could later be increased to 2 million B/D, the TAPS line's design capacity. This large new source of domestic petroleum supply will be of substantial benefit to the Nation. By replacing an equivalent number of barrels of imports, it will aid in reducing our growing dependence on foreign oil. It will also save nearly $6 billion in annual dollar outflow in 1978 over what would otherwise be the case and provide other benefits to the economy which will be shared by the Nation as a whole.

The opening of this new area of production, however, because it begins a shift away from traditional oil producing areas of the Southwestern region of the country and thus requires the planning and provision of new distribution systems, has been accompanied by controversy over which regions of the country will receive the impacts—both desired and undesired—of direct delivery of North Slope crude oil. Many factors must be taken into account in planning for these new distribution systems, including the availability and cost of transportation, the capability of refiners to process the oil, the availability and cost of other sources of petroleum supply (either crude or product) to the receiving region, and the ability to mitigate environmental impacts.

III. *Regional Distribution*

This section discusses the dependency of U.S. refiners on foreign imports by region. It then looks specifically at the West Coast and the three regions of the country identified in Section 18 (and therefore of primary concern to this report), i.e., the Northern Tier, New England, and the Middle Atlantic States.

A. *Refinery Dependence on Imports, By Region*

The U.S. is becoming increasingly dependent on crude oil from foreign sources. Crude oil imports made up 33 percent of refinery feedstock in 1975, rose to 39 percent in 1976, and are expected to increase to 41 percent in 1977. The relationship between domestic and foreign crude oil run in U.S. refineries is shown in Table I.

PAD District I, the East Coast, has been the most dependent on foreign crude for refinery input, having run more foreign than domestic crude in all but two of the years from 1966 to 1975, and obtaining over 83 percent of its crude from foreign sources since 1973. PAD District V, the West Coast (and Alaska and Hawaii), has historically been the region next most reliant on imported crude with refinery use of foreign feedstock gradually increasing from about 20 percent in 1968 to 50 percent in 1976.

TABLE I

U.S. CRUDE OIL REFINERY RUNS BY P.A.D. DISTRICT—DOMESTIC vs FOREIGN

(Thousands of barrels per day)

	DISTRICT I		DISTRICT II		DISTRICT III		DISTRICT IV		DISTRICT V		TOTAL		Total Crude Runs	Foreign Crude Runs as a % of Total Crude Runs
Year	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign		
1966	540	711	2,660	1[illegible]	3,664	1	325	13	1,024	368	8,221	1,223	9,444	13.0
1967	680	587	2,698	156	3,901	2	326	18	1,095	357	8,695	1,120	9,815	11.4
1968	596	707	2,744	[1]214	4,110	2	339	27	1,243	324	9,038	1,274	10,312	12.4
1969	560	749	2,778	[1]240	4,263	[2]	351	35	1,267	391	9,214	1,415	10,629	13.3
1970	706	584	2,844	[1]310	4,357	—	345	47	1,297	380	9,549	1,321	10,870	12.2
1971	649	682	2,853	[1]377	4,438	54	360	45	1,239	503	9,539	1,661	11,200	14.8
1972	347	971	2,850	[1]461	4,741	75	360	37	1,198	661	9,491	2,205	11,696	18.9
1973	237	1,264	2,774	[1]711	4,656	398	372	44	1,167	808	9,206	3,225	12,481	25.9
1974	236	1,173	2,654	[1]679	4,817	786	376	44	1,098	770	8,681	3,452	12,133	28.5
1975	166	1,238	2,630	[1]778	4,066	1,179	380	45	1,083	840	8,325	4,083	12,408	32.9
1976	170	1,415	2,611	[1]909	3,957	1,760	391	51	1,088	1,034	8,167	5,249	13,416	39.1
1977	160	1,490	2,570	[1]1,030	3,820	2,230	385	45	1,345	940	8,280	5,735	14,015	40.9
1978	150	1,520	2,500	[1]1,100	4,150	2,250	385	40	1,865	575	9,050	5,480	14,535	37.7

[1] Preliminary.

[1] FEA estimates.

[1] Includes some Athabasca hydrocarbons.

[2] Less than 1,000 barrels daily.

Source: Bureau of Mines Petroleum Statement, Annual and December Issues and Federal Energy Administration.

PAD IV, the Rocky Mountain States, as a whole has little refinery capacity, and is the region least dependent on imported crude oil (from Canada), using only 12 percent imported feedstock in 1976. (Montana is, however, more heavily dependent. See Table VIII—Montana Supply/Demand Balance.)

Table II shows refinery use of foreign crudes by region, both actual and projected, for the years 1975 through 1978. Estimates for 1978 show the effect on regional dependency of an assumed short-term approach to the distribution of North Slope oil, i.e., the delivery of about 500,000 B/D through the Panama Canal to Gulf Coast refineries, replacing an equivalent amount of imports and declining domestic production there.[1] These estimates also assume that imports from Canada continue to decline, and that 700,000 B/D of North Slope oil replaces a like amount of imports to West Coast refineries. Due to current refinery limitations, the 1978 estimate assumes that 575,000 B/D of imported light, low-sulfur crude oil, primarily Indonesian, will continue to be required by PAD V refiners.

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[1] In its April 15, 1977, Report to Congress, on the Pricing of Alaska North Slope Crude Oil, FEA estimated that the volume of North Slope crude that would be available for delivery outside of PAD V would be in the range of 400,000-600,000 B/D. The 400,000 B/D figure was used for the pricing discussion contained in that report, in keeping with the assumption used in the report to adopt, for purposes of analysis, the case resulting in the highest first sale price. It was recognized in that report, however, that to achieve that result, it would be necessary to back out every possible barrel of imported crude oil for which Alaska North Slope crude is substitutable. The 500,000 B/D figure is considered to be a more likely outcome.

TABLE II

REGIONAL DISTRIBUTION OF FOREIGN OIL USED IN U.S. REFINERIES, 1975-78

(Excluding Caribbean Refineries)

	1975	1976	1977 Est.	1978 Est.
Dist. I East Coast	88%	89%	90%	91%
Dist. II Midcontinent	23%	27%	29%	31%
Dist. III Gulf Coast	23%	31%	37%	35%
Dist. IV Rocky Mountains	11%	12%	10%	9%
Dist. V West Coast	44%	50%	41%	24%
Total U.S.	33%	39%	41%	38%

Source: Table I.

Under these short-term conditions, the addition to domestic supply of 1.2 million B/D of Alaskan North Slope crude in 1978 is expected to reduce U.S. refinery use of imported crude from 41 to 38 percent. Decline in the use of imports would be expected in PAD's III, IV, and V. In PAD II, the Midcontinent area, where a decline in domestic production has created a crude oil supply problem (with the corresponding need for new or expanded pipeline systems), dependence on imports would increase slightly, to 31 percent.

The Northern Tier area, which encompasses the northern portions of PADs II, IV, and V, will receive a low level of imports from Canada, but will continue to receive some imports from other sources. The East Coast will remain highly dependent on foreign crude. The reasons for this are discussed in Part D of this section, dealing with New England and the Middle Atlantic States.

B. *West Coast*

Because the costs of transporting Alaskan oil by tanker to the West Coast of the United States are relatively low, this region is seen as the primary receiving point. If all of the Alaskan oil could be used on the West Coast, it would displace an equivalent amount of crude imports (now over 1 million B/D). At the time TAPS was authorized, in late 1973, demand for petroleum products on the West Coast, which has traditionally been supplied from regional production augmented by substantial imports of light, low-sulfur crude oil from Indonesia and Canada, was expected to increase at its historic annual rate—4.4 percent. The Arab oil embargo, however, along with higher prices and conservation efforts, resulted in a greater than 5 percent *decline* in demand in 1973-74. Subsequent annual growth in demand for petroleum product has been at 2-3 percent, and, in 1976, regional demand just regained 1973 levels. In addition, new production sources, such as NPR-1 at Elk Hills, California, Outer Continental Shelf areas, and enhanced recovery projects, have increased supply on the West Coast.

A major factor which determines the amount of North Slope crude that can be processed on the West Coast is the nature of refinery configurations in the region. Unlike the East Coast, West Coast petroleum product demand, with the exception of some imports of low-sulfur residual fuel oil, has traditionally been met by regional refineries. A significant proportion of West Coast refinery capacity is designed to process primarily light, low-sulfur crudes, such as are imported from Canada and Indonesia. A portion of this type of capacity has been or will be extensively modified to process the heavier, higher sulfur North Slope crude.[2] Because such modifications require 3 years to complete, however, no

[2] 0.9-1.1 percent sulfur, API 26°-28°.

more than 600,000-800,000 B/D of refining capacity for North Slope type crude is expected to be operational before 1980. It is probable, therefore, that West Coast refineries will continue to require more than 500,000 B/D of crude imports through 1980. Projected supply and demand for crude oil in PAD V through 1979 is summarized below.

PAD V Refinery Supply and Demand for Crude Oil
(MB/D)

	1977	1978	1979
Supply			
Alaska	440	1,350	1,340
North Slope	270	1,200	1,200
South Alaska	170	150	140
Lower 48	945	965	1,010
Foreign Imports	940	525-625	525-625
Refinery Demand	2,325	2,440	2,490
Shipment Out of PAD V	—	400-500	385-485

Beyond 1980, the amount of PAD V crude available to other regions of the country will be influenced by oil pricing policy, OCS leasing rates, future development on the North Slope of Alaska, and the extent of enhanced recovery activities in California.

C. *Northern Tier States*

1. *General*

The Northern Tier States named in Section 18 are Washington, Oregon, Idaho, Montana, North Dakota, Minnesota, Michigan, Wisconsin, Illinois, Indiana, and Ohio. Between the early 1950's and the early 1970's, these States became increasingly dependent on imports from Canada, primarily of light crudes. At their highest level, 1.1 million B/D in 1973, Canadian crude oil imports made up about 30 percent of the Northern Tier

States' supply. Northern Tier crude oil transportation systems and refining capacity were, therefore, designed to handle large amounts of supply from this source.

In late 1974 the Canadian Government, as discussed below, announced plans to gradually curtail exports to the United States to zero by 1982. At that time, imports from Canada averaged about 800,000 B/D, and provided about 26 percent of Northern Tier crude oil supply. By 1976 Canadian crude imports had been reduced to a small percentage of the crude feedstock to all Northern Tier refineries, but remained above 25 percent for eleven landlocked refiners who had restricted access to replacement supplies.

Canadian plans for curtailment of exports to the U.S. are undergoing continual change. Beginning in January of 1977, Canada further modified its export policy to differentiate between light and heavy crudes. The export allocation and 135,000 B/D of heavy crudes. In February and March of this year, Canada allowed the export of amounts of heavy crude oil above the amounts established under the allocation program. The Canadian National Energy Board is currently reviewing and revising the schedule of exports to the U.S.

Several means of meeting the cutoff in Canadian crude through alternate sources of crude or product supply and exchanges have been adopted or are under consideration by refiners in Northern Tier States. Refiners located in Illinois, Indiana, and Ohio are receiving crude supplies through existing pipelines from the Midwest, Southwest, and Gulf Coast. In addition, product demand in these areas may be met through pipeline and barge shipments from the Gulf Coast and Mid-continent refining centers.

The impact of the declining availability of Canadian crude oil on Washington, northern Idaho, Montana, North Dakota, Minnesota, Michigan and Wisconsin is being

monitored by the Federal Energy Administration, and will be reevaluated by FEA once revised Canadian policy is announced. It is in this area that the refineries which have been most dependent upon Canadian crude have limited access to other supplies, and all or portions of three States (eastern Washington, Montana, and northern Idaho) could experience significant product shortfalls as a result. The discussion that follows is based upon FEA's analysis of short and long-term crude oil and product supplies to this area. Information concerning Canadian imports contained in this analysis is based upon National Energy Board projections of total exports which were announced in September 1975. The recent changes in NEB policy, which provide for separate licensing of exports of light and heavy crude, could result in shortfalls in Montana and eastern Washington at an earlier date than projected in FEA's preliminary short term analysis presented here. Possible changes are presently being analyzed by FEA in anticipation of an announcement in May 1977 by the Canadian Government of the level of exports that will be permitted the second half of 1977 and in 1978. Following the May announcement, supply to the Northern Tier States will be reevaluated by FEA, and a report on the FEA's analysis will be sent to the Congress promptly thereafter.

2. *The Effect of Canadian Government Actions*

Virtually 100 percent of Canadian crude oil production comes from the three western provinces of British Columbia, Alberta and Saskatchewan, while eastern Canada is dependent largely upon OPEC imports. By 1970, western Canada had developed to the point where Canada was self-sufficient, in the sense that it was producing as much oil in the western provinces as it was consuming on a national basis. But a considerable volume of western crude was being exported and had to be replaced in the eastern provinces with imports.

In October 1974, the National Energy Board (NEB), conducted its first annual public hearing on the export of crude oil. Evidence presented showed that Canadian oil production would decline from 2.1 million barrels per day in 1975 to about 1.7 million in 1980 and 1.3 million in 1985, and that by the early 1980's domestic supplies would no longer be sufficient to meet Canadian domestic feedstock requirements.

Most of the volume drop will occur in Alberta, which currently accounts for 85 percent of Canadian output. It was estimated that by 1985, domestic production would satisfy only 75 percent of western Canada's requirements, and none of eastern Canada's. Based on these findings, the NEB recommended to the national government that exports of oil be reduced gradually and be terminated by the early 1980's unless significant new production came on stream.

The criteria governing energy exports are set out in the National Energy Board Act. Essentially, exports will be allowed only after all Canadian requirements have been met. In the fall of each year, the NEB holds public hearings on Canada's anticipated supply and demand situation, in order to recommend maximum authorized levels of exports for the following year and to provide some indication of likely supply levels for subsequent years.

In light of NEB projections of production and domestic demand, the Canadian Government announces its schedule for phasing out oil exports to the United States. The Canadian curtailment schedule authorized exports of 1 million B/D in 1974 and the U.S. imported 878,000 B/D; in 1975, 800,000 B/D was authorized for export and the U.S. imported 674,000 B/D. The 1976 Canadian export level was made contingent on the phasing in of the Sarnia-Montreal Pipeline and the result was that

the U.S. imported all of the Canadian oil made available, 437,000 B/D. In 1973, Canadian exports to the U.S. market averaged 1.1 million B/D, over half of total Canadian production.

The NEB sets the level of exportable surplus for only one year at a time. However, in its 1975 report, the Canadian Government provided data from which a projection could be made as to possible levels of exports for each year through 1982. This anticipated schedule, based on 1975 information, is shown in Table III.

The Government of Canada now has its export policy under review, and a revised schedule for 1977 and 1978 is expected to be announced in May. It is likely that the actual level set by the revised schedule will be different from that shown in Table III. In addition, the revised schedule will continue to distinguish separate export levels for light and heavy crude, and may result in less volume actual being imported by some U.S. refiners, due to their limited capacity to receive and/or use heavy crude oil. (In January 1977, Canada began differentiating between light and heavy crude oil in issuing export licenses.)

TABLE III

CANADIAN EXPORTS OF CRUDE OIL AND CONDENSATE [1]

Year	Actual and Anticipated Canadian Exports to United States (Thousand of Barrels Daily)
1971	755
1972	939
1973	1,109
1974	878
1975	674
1976	437
1977	[2] 255
1978	[2] 166
1979	[2] 85
1980	[2] 55
1981	[2] 5
1982	[2] 0

3. *Operational Constraints*

At present, the Canadian crude oil production and transportation system requires certain minimum levels of crude oil production and/or pipeline utilization for efficient operation. These "operational constraints" include minimum pipeline thruputs, necessary condensate production, and the inability of some crude oil to be transported to some areas due to absence of pipelines. Because these constraints affect the level of Canadian requirements for various component crudes, the relative proportions of crudes exported will change as total Canadian exports are reduced. These changes may result in operational problems and the need for adjustment in the Mandatory Canadian Crude Oil Allocation Program administered by the Federal Energy Administration.

[1] Source of actual data is the Bureau of Mines.

[2] Anticipated based on data contained in 1975 National Energy Board Report on Crude Oil Exports. As a result of hearings held in October 1976, it is anticipated that this schedule will be changed in May 1977. In particular, the recent Canadian decision to separately allocate light and heavy crude for export may result in less volumes actually being imported by some U.S. refiners, due to their limited capacity to receive and/or use heavy crude oil.

2. [sic] *Analysis by State* [3]

Michigan

Table IV presents the supply/demand balance for Michigan. It is not expected that there will be a short-

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[3] This analysis is based on the following Supply/Demand Balance Assumptions:

Supply

Crude supply data for both 1976 and 1977 were obtained from individual interviews with each of the refiners in the Northern Tier. Forecasts for 1978, 1979, and 1980 were made using the following assumptions:

1. Alaskan North Slope crude will be available to meet 88,000 B/D of the needs of Washington State refineries in late 1977 provided that the Alaskan pipeline becomes operational in 1977.
2. Due to limited existing and projected crude pipeline capacity, exchanges of crude between U.S. and Canadian refiners through Chicago will not exceed 80,000 B/D. If the level of exchanges is lower, then crude deficiencies would no doubt have to be replaced by higher levels of product shipments into these States with reduced supply.
3. The FEA Buy/Sell Crude Oil Allocation, Canadian Crude Allocation and Entitlement Programs will all be extended essentially as they are now.
4. The Williams Pipeline expansion to bring more crude oil to the Minneapolis, Minnesota, area will be operational in late 1977 at 80,000 B/D, will expand to 100,000 B/D in 1978, and will reach 130,000 B/D (Phase II) by 1979.
5. Crude shipped through the Williams Pipeline would be of foreign origin landed at Gulf Coast ports.
6. Availability of crude to southern Minnesota would allow reclassification of the two refineries in that area from Priority I to Priority II in the FEA Canadian Crude Oil Allocation Program, making available additional crude to Priority I refineries and, possibly, additional supply to Priority II refineries on a pro-rata basis.
7. Domestic crude production (excluding Alaska) will continue to decline, and supplier/puchaser relationships under FEA's regulations (§ 211.63) will continue as currently determined.
8. The Michigan power plant which burns crude oil will be switched to residual fuel oil by late 1977.

[Footnote continued on page 215]

TABLE IV

MICHIGAN—SUPPLY/DEMAND BALANCE (MB/D)

	1976	1977	1978	1979	1980
DOMESTIC CRUDE SUPPLY					
Intrastate	54.0	53.0	52.0	51.0	50.0
Interstate					
Other Northern Tier	0	0	0	0	0
Other Domestic	45.6	44.7	43.7	42.7	41.7
North Slope/Alaska	0	0	0	0	0
Total Domestic Supply	99.6	97.7	95.7	93.7	91.7
FOREIGN CRUDE SUPPLY					
Canadian [1]					
MCAP 10CFR 214	54.4	39.7	35.1	17.7	11.4
By Exchange	0	0	10.0	10.0	10.0
Other Foreign	21.9	29.8	51.7	77.9	76.7
Total Foreign Supply	76.3	69.5	96.8	105.6	98.1
TOTAL CRUDE SUPPLY	175.9	167.2	192.5	199.3	189.8
TOTAL REFINERY YIELD (0.95 Total Crude Supply)	167.1	158.8	182.9	189.3	180.3
PRODUCT INSHIPMENTS					
Non-Northern Tier					
From	398.9	423.2	417.1	427.7	454.7
(To)	0	0	0	0	0
Northern Tier					
Wisconsin —From	0	0	0	0	0
—(To)	0	0	0	0	0
Minnesota —From	0	0	0	0	0
—(To)	0	0	0	0	0
North Dakota —From	0	0	0	0	0
—(To)	0	0	0	0	0
Montana —From	0	0	0	0	0
—(To)	0	0	0	0	0
Washington —From	0	0	0	0	0
—(To)	0	0	0	0	0
Net Inshipments	398.9	423.2	417.1	427.7	454.7
TOTAL SUPPLY	566.0	582.0	600.0	617.0	635.0
TOTAL DEMAND	566.0	582.0	600.0	617.0	635.0
CRUDE SHORTFALL	0	0	0	0	0
PRODUCT SHORTFALL (0.95 Crude)	0	0	0	0	0

[1] Based upon NEB's Sept. 1975 projections these volumes are expected to be changed by the revised Canadian export schedule to be announced in May 1977. Source: FEA preliminary analysis

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[3] [Continued]

9. The curtailment of Canadian crude supplies will follow the schedule shown in Table III.

Demand

Product demand for each state was based on a forecast developed by Bonner and Moore Associates, Inc., entitled, *Crude Supply Alternatives for the Northern Tier States* (Vol. II, July 1976).

Historical data was from Bureau of Mines reports, supplemented by direct data from Northern Tier States. The following assumptions are implicit in the calculations:

1. Winter weather is normal.
2. Increase in demand due to natural gas curtailments is insignificant. (Minnesota, for example, estimated that natural gas curtailments could add about 1.3 percent to its petroleum product demand growth rate.)

fall of either crude or products for Michigan in the 1976-1980 time period. However, to meet growth in demand, product inshipment is projected to increase from 398,900 B/D in 1976 to 454,700 B/D in 1980. In 1975-78 percent of Michigan demand was met by product inshipments. These shipments will vary between 69 and 72 percent in the 1976-1980 time period and will be made from the Chicago and Toledo refinery centers, assuming there is no difficulty in shipping crude to these centers.

Wisconsin

Table V shows the supply/demand balance for the State of Wisconsin. In 1976 over 91 percent of the State petroleum demand was met by product shipments from other States, and 88 percent of these shipments came from non-Northern Tier States. This trend is forecast to continue through 1980. By 1980 92 percent of the State's demand will be met by such product inshipments, with over 80 percent of supply coming from non-Northern Tier States. Minnesota will continue to supply between 10.8 and 11.4 percent of Wisconsin's petroleum product demand. There is sufficient product pipeline capacity into Wisconsin from either the South or Minnesota to meet demands through 1980, even if the one refinery in Wisconsin were to be phased out of operation. However, this would place about 20,000 B/D additional requirement on Minnesota out of the Minneapolis refining center.

TABLE V

WISCONSIN—SUPPLY/DEMAND BALANCE (MB/D)

		1976	1977	1978	1979	1980
DOMESTIC CRUDE SUPPLY						
Intrastate		0	0	0	0	0
Interstate						
Other Northern Tier		0	0	0	0	0
Other Domestic						
North Slope/Alaskan		0	0	0	0	0
Total Domestic Supply		0	0	0	0	0
FOREIGN CRUDE SUPPLY						
Canadian [1]						
MCAP 10CFR 214		25.6	24.7	28.3	16.6	10.7
By Exchange		0.1	3.0	3.0	10.6	16.1
Other Foreign		0	0	0	0	0
Total Foreign Supply		25.7	27.7	31.3	27.2	26.8
TOTAL CRUDE SUPPLY		25.7	27.7	31.3	27.2	26.8
TOTAL REFINERY YIELD (0.95 Total Crude Supply)		24.4	26.3	29.7	25.8	25.4
PRODUCT INSHIPMENTS						
Non-Northern Tier						
From		225.4	228.6	232.5	240.0	246.6
(To)		0	0	0	0	0
Northern Tier						
Michigan	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Minnesota [2]	—From	30.2	31.1	30.8	34.2	35.0
	—(To)	0	0	0	0	0
North Dakota	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Montana	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Washington	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Net Inshipments		255.6	259.7	263.3	274.2	281.6
TOTAL SUPPLY		280.0	286.0	293.0	300.0	307.0
TOTAL DEMAND		280.0	286.0	293.0	300.0	307.0
CRUDE SHORTFALL		0	0	0	0	0
PRODUCT SHORTFALL (0.95 Crude)		0	0	0	0	0

[1] Based on NEB Sept. 1975 projections. These volumes are expected to be changed by the revised schedule to be announced in May 1977.

[2] Net Product Shipments—Wisconsin receives more product than it ships to Minnesota.

Source: FEA preliminary analysis.

Minnesota

Table VI presents the supply/demand balance for Minnesota. In 1976 net product shipments to Minnesota amounted to 42.2 percent of total demand. Due to curtailment of Canadian feedstocks, product shipments are projected to increase to 47.8 percent by 1978 and to decrease by 1980 to 42.2 percent. This growth could be supplied via existing product pipeline capacity. In 1978

Minnesota spare product pipeline capacity would amount to only 20,000 B/D, or 10 percent, which could result in seasonable shortages. However, the planned expansion in the Williams Pipeline should increase the volume of "other foreign crude" available to Minnesota refiners, and therefore product inshipment requirements will probably be less than projected here.

TABLE VI

MINNESOTA—SUPPLY/DEMAND BALANCE (MB/D)

		1976	1977	1978	1979	1980
DOMESTIC CRUDE SUPPLY						
Intrastate		0	0	0	0	0
Interstate						
Other Northern Tier		21.7	22.5	18.0	18.0	18.0
Other Domestic		11.4	15.3	12.6	10.6	13.9
North Slope/Alaskan		0	0	0	0	0
Total Domestic Supply		33.1	37.8	30.6	28.6	31.9
FOREIGN CRUDE SUPPLY						
Canadian						
MCAP 10CFR 214[1]		139.7	134.9	27.0[3]	13.3	8.6
By Exchange		2.0[2]	10.0	10.0	16.0	26.0
Other Foreign		0	0	100.0[4]	130.0	130.0
Total Foreign Supply		141.7	144.9	137.0	159.3	164.6
TOTAL CRUDE SUPPLY		174.8	182.7	167.6	187.9	196.5
TOTAL REFINERY YIELD (0.95 Total Crude Supply)		166.0	173.6	159.2	178.5	186.7
PRODUCT INSHIPMENTS						
Non-Northern Tier						
From		149.3	162.5	186.1	178.9	184.1
(To)		0	0	0	0	0
Northern Tier						
Michigan	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Wisconsin[5]	—From	0	0	0	0	0
	—(To)	(30.2)	(31.1)	(30.8)	(34.2)	(35.0)
North Dakota	—From	30.0	30.0	30.0	30.0	30.0
	—(To)	(28.1)	(39.0)	(39.5)	(39.2)	(42.8)
Montana	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Washington	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Net Inshipments		121.0	122.4	145.8	135.5	136.3
TOTAL SUPPLY		287.0	296.0	305.0	314.0	323.0
TOTAL DEMAND		287.0	296.0	305.0	314.0	323.0
CRUDE SHORTFALL		0	0	0	0	0
PRODUCT SHORTFALL (0.95 Crude)		0	0	0	0	0

[1] Based on NEB Sept. 1975 projections. These volumes are expected to be changed by the revised Canadian export schedule to be announced in May 1977.

[2] Includes exchanges from Priority I to Priority II refineries in 1976.

[3] Effect of reclassification of Ashland and Koch to Priority II when Williams Crude Pipeline becomes operational.

[4] This volume should increase due to a recent Williams Pipeline decision to expand capacity early in 1978.

[5] Net Product Shipments-Wisconsin receives more product than Minnesota.

Source: FEA preliminary analysis.

North Dakota

Table VII shows the supply/demand balance for North Dakota. The product shipments into North Dakota are projected to grow from 31.4 percent of product demand in 1976 to 54.8 percent in 1980. At present, North Dakota both receives product from and supplies product to Minnesota, including product that is shipped through Minnesota from other States; in balance, however, the net flow is small. By 1980 Minnesota refineries or product pipelines flowing through Minnesota from other states will provide a net shipment into North Dakota of about 12,800 B/D. Product pipelines should be sufficient to meet the State's petroleum demands, although if not

TABLE VII

NORTH DAKOTA—SUPPLY/DEMAND BALANCE (MB/D)

		1976	1977	1978	1979	1980
DOMESTIC CRUDE SUPPLY						
Intrastate		36.2	34.0	31.9	30.0	28.3
Interstate						
Other Northern Tier		1.0	1.0	1.0	1.0	1.0
Other Domestic		0	0	0	0	0
North Slope/Alaskan		0	0	0	0	0
Total Domestic Supply		37.2	35.0	32.9	31.0	29.3
FOREIGN CRUDE SUPPLY						
Canadian						
MCAP 10CFR 214		4.0	0	0.2	0	0
By Exchange		5.0[1]	0	0	3.0	3.0
Other Foreign		0	0	0	0	0
Total Foreign Supply		9.0	0	.2	3.0	3.0
TOTAL CRUDE SUPPLY		46.2	35.0	33.1	34.0	32.3
TOTAL REFINERY YIELD						
(0.95 Total Crude Supply)		43.9	33.2	31.4	32.3	30.7
PRODUCT INSHIPMENTS						
Non-Northern Tier						
From		10.0	12.2	11.5	12.5	11.6
(To)		0	0	0	0	0
Northern Tier						
Michigan	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Wisconsin	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Minnesota	—From	28.1	39.0	39.5	39.2	42.8
	—(To)	(30.0)	(30.0)	(30.0)	(30.0)	(30.0)
Montana	—From	12.0	10.6	13.6	13.0	13.0
	—(To)	0	0	0	0	0
Washington	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Net Inshipments		20.1	31.8	34.6	34.7	37.3
TOTAL SUPPLY		64.0	65.0	66.0	67.0	68.0
TOTAL DEMAND		64.0	65.0	66.0	67.0	68.0
CRUDE SHORTFALL		0	0	0	0	0
PRODUCT SHORTFALL (0.95 Crude)		0	0	0	0	0

[1] Includes exchanges from Priority I to Priority II refineries in 1976.

Source: FEA preliminary analysis.

expanded by 1980, there will be only 8 percent spare product pipeline capacity and some seasonal or spot shortfalls may occur.

Montana

Table VIII presents Montana's supply/demand balance for the 1976-1980 time period. Although preliminary data showed that Montana would have more than enough

TABLE VIII

MONTANA—SUPPLY/DEMAND BALANCE (MB/D)

		1976	1977	1978	1979	1980
DOMESTIC CRUDE SUPPLY						
Intrastate		23.6	22.4	21.3	20.2	19.2
Interstate						
Other Northern Tier		0	0	0	0	0
Other Domestic		44.9[1]	48.4[1]	50.0	50.0	50.0
North Slope/Alaskan		0	0	0	0	0
Total Domestic Supply		68.5	70.8	71.3	70.2	69.2
FOREIGN CRUDE SUPPLY						
Canadian						
MCAP 10CFR 214		58.4	55.7[2]	63.9[2,3]	37.3[2]	24.3[2]
By Exchange		1.0	0	0	10.0	10.0
Other Foreign		0	0	0	0	0
Total Foreign Supply		59.4	55.7	63.9	47.3	34.3
TOTAL CRUDE SUPPLY		127.9	126.5	135.2	117.5	103.5
TOTAL REFINERY YIELD (0.95 Total Crude Supply)						
PRODUCT INSHIPMENTS						
Non-Northern Tier						
From		11.7	12.7	7.0	15.0	15.0
(To)		0	0	0	0	0
Northern Tier						
Michigan	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Wisconsin	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Minnesota	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
North Dakota	—From	0	0	0	0	0
	—(To)	(12.0)	(10.6)	(13.6)	(13.0)	(13.0)
Washington	—From	0	0	0	0	0
	—(To)	(37.2)	(37.3)	(34.8)	(25.6)	(27.2)
Net Inshipments		(37.5)	(35.2)	(41.4)	(23.6)	(25.2)
TOTAL SUPPLY		84.0	85.0	87.0	88.0	73.1
TOTAL DEMAND		84.0	85.0	87.0	88.0	90.0
CRUDE SHORTFALL		0	0	0	0	17.8
PRODUCT SHORTFALL (0.95 Crude)		0	0	0	0	16.9

[1] Based on interview with refineries.

[2] Based on NEB Sept. 1975 projections. These volumes are expected to be changed by the revised Canadian export schedule to be announced in May 1977.

[3] This volume could be considerably less under the revised Canadian export schedule.

Source: FEA preliminary analysis.

crude to meet its own petroleum demand, the inclusion of Montana refineries' requirements to supply product to western North Dakota, northern Idaho, and eastern Washington indicated that Montana itself might fall short of product by 1980.[4] (Eastern Washington is heavily dependent on Montana refineries, and some product will have to continue to be shipped to meet that area's needs). It is not clear from current projections that Montana will have sufficient crude oil supply to make up the possible shortfall, unless alternative short-term measures are implemented.

Washington

Table IX gives the supply/demand situation for the total State of Washington. However, a full picture of the supply/demand situation for Washington State can be determined only by viewing the State as two supply/demand regions, eastern Washington and western Washington.

Eastern Washington

Table X shows a constructed supply/demand balance for eastern Washington. This table has been developed based upon available product pipeline capacity into eastern Washington from the Billings, Montana, and the Salt Lake City, Utah areas, and barging capabilities on the Columbia River System. However, by 1979 eastern Washington will likely experience a product shortfall of over 10,000 B/D, due to projected demand growth and

[4] This shortfall could occur as early at 1978 if the Canadian allocation of light crude oil decreases relative to heavy crudes, as anticipated. Montana refineries are constrained in their ability to receive and process heavy, sour crude oils.

to the decreased availability of product from Montana. If higher rates of growth are assumed for this area, or if Canadian crude supplies to Montana are less than projected, the shortfalls could start to appear as early as late 1977, or early 1978. Higher barge shipments on the Columbia River could possibly be utilized to meet this shortfall. However, questions as to the Columbia River barging capacity need further study.

TABLE IX

WASHINGTON—SUPPLY/DEMAND BALANCE (MB/D)

		1976	1977	1978	1979	1980
DOMESTIC CRUDE SUPPLY						
Intrastate		0	0	0	0	0
Interstate						
Other Northern Tier		0	0	0	0	0
Other Domestic		12.0	0	0	0	0
North Slope/Alaskan		0	88.0	105.0	110.0	115.0
Total Domestic Supply		12.0	88.0	105.0	110.0	115.0
FOREIGN CRUDE SUPPLY						
Canadian						
MCAP 10CFR 214		75.2	0	6.3	0	0
By Exchange		3.7	15.0	15.0	15.0	15.0
Other Foreign		197.9	182.0	166.2	162.4	158.6
Total Foreign Supply		276.8	197.0	187.5	177.4	173.6
TOTAL CRUDE SUPPLY		288.8	285.0	292.5	287.4	288.6
TOTAL REFINERY YIELD (0.95 Total Crude Supply)		274.4	270.8	277.8	273.0	274.2
PRODUCT INSHIPMENTS						
Imported [1]		21.0	21.0	21.0	21.0	21.0
Non-Northern Tier						
From		18.0	18.0	18.0	18.0	18.0
(To)		(117.6)	(109.1)	(107.6)	(88.6)	(85.4)
Northern Tier						
Michigan	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Wisconsin	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Minnesota	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
North Dakota	—From	0	0	0	0	0
	—(To)	0	0	0	0	0
Montana	—From	37.2	37.3	34.8	25.6	27.2
	—(To)	0	0	0	0	0
Net Inshipments		(41.4)	(32.8)	(33.8)	(24.0)	(19.2)
TOTAL SUPPLY		233.0	238.0	244.0	249.0	255.0
TOTAL DEMAND		233.0	238.0	244.0	249.0	255.0
CRUDE SHORTFALL		0	0	0	0	0
PRODUCT SHORTFALL (0.95 Crude)		0	0	0	0	0

[1] 21 MB/D of finished and unfinished oil was imported into Puget Sound in 1975 from various foreign sources and this level is assumed at a minimum to continue.

Source: FEA preliminary analysis.

TABLE X

Eastern Washington
Supply/Demand Balance
(MB/D)

Year	Columbia River Barge	Billings, Montana	Salt Lake City, Utah [2]	Total Supply	Total Demand [1]	Short-Fall
1975	15.6	39.0	17.0	71.6	71.6	—
1976	18.0	37.2	18.0	73.2	73.2	—
1977	19.5	37.3	18.0	74.8	74.8	—
1978	23.6	34.8 [3]	18.0	76.4	76.4	—
1979	23.8 [4]	25.6	18.0	67.4	78.1	10.7
1980	23.8	27.2	18.0	69.0	79.8	10.8

[1] 2.2% Growth in demand has been assumed, i.e., the same as for the total State of Washington.

[2] Via Boise, Idaho to Pasco, Washington with rated capacity of 18 MB/D.

[3] This volume could be less, depending upon volumes of Canadian crude available to Billings refiners.

[4] Maximum annual petroleum product shipment on Columbia River System (up) at McNary Dam Lock was 23.8 MB/D in 1973.

Source: FEA preliminary analysis.

Western Washington and Oregon

The market area for western Washington also includes western Oregon and to a lesser extent eastern Oregon. Most of the remainder of Oregon's product supply comes from the San Francisco and the Salt Lake City areas. Of all the Northern Tier areas, western Washington and Oregon will be affected least by the loss of Canadian crude imports. Although western Washington and western Oregon have historically been almost totally dependent on product refined from Canadian crude supplied via the Trans-Mountain pipeline, the refineries supplying these areas can alternatively receive crude from tankers through existing facilities. However, tanker traffic in the Puget Sound area is a source of continuing concern in Washington State, principally because of the potential for oil spills.

For part of the 1977-1980 period, western Washington will become more dependent on foreign crude oil (other than Canadian) for replacing curtailed supplies of Canadian crude and for satisfying growing demand for petroleum products. Short-term plans for importing foreign crude increase this area's vulnerability to a crude oil embargo.

5. *Crude Supply Alternatives (1977-1980)*

In the 1977-1980 time period, there are only a limited number of alternatives for supplying additional crude into some Northern Tier States, such as Montana and eastern Washington. The principal alternatives are: (a) U.S./Canadian crude exchanges, (b) more use of indigenous crude in the Northern Tier States, (c) modification of the Mandatory Canadian Crude Oil Allocation Program, and (d) use of unit trains.

a. *U.S./Canadian Exchanges*

An increase in the level of commercial crude oil exchanges between Canadian and U.S. refiners is one of the more attractive short-term solutions to the decline in imports of Canadian crude oil; exchanges require no capital investment and can be quickly implemented if approved by both governments. Exchange oil is available in addition to the Canadian exportable surplus and, therefore, is not covered by the FEA Mandatory Canadian Crude Oil Allocation Program.

In 1975 a joint U.S./Canadian Working Party agreed that commercial exchanges between Canadian and U.S. companies should not be hindered by regulation, as long as such exchanges are consistent with national energy policies of both countries. It was also agreed that the individual governments would not participate in exchanges but would promote an atmosphere conducive to them.

The responsibility for granting export licenses for U.S. domestic crude oil is vested in the Department of Commerce (DOC) under authority of the Export Administration Act of 1969. Although this Act has lapsed, its policy is continued in DOC regulations under other legislation. Section 3, paragraph 2, of the Export Administration Act stated, in part:

> "It is the policy of the United States to use export controls . . . to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand . . ." [5]

In response to DOC's request that FEA review exchange applications to ensure that they are not inflationary and that no windfall profits accrue to the parties involved, FEA formed a Committee on Canadian Crude Oil Exchanges on August 4, 1976. The Committee reviews applications to determine: (1) that the proposed exchange meets the objective of supplying additional crude oil to Canadian-dependent refineries; (2) that the domestic crude exported is not being taken from a crude-deficient area where physical replacement would be difficult; and (3) whether or not there is any other feature of the exchange that would make it undesirable. It then recommends to DOC action on issuance of export licenses.

To avoid distortion in crude prices and in the value of entitlements, a firm seeking an export license is required to structure exchanges on a barrel-for-barrel basis, with

[5] Section 28(u) of the Minerals Lands Leasing Act of 1920, as amended, appears to exempt under some circumstances, domestically produced crude oil transported through pipeline rights-of-way granted under Section 28(a) of that Act and exchanged with persons or the governments of either Canada or Mexico from the licensing requirements of the Export Administration Act of 1969 as amended. Regulations governing this exemption have not been promulgated by the Secretary of the Interior.

only normal quality and location differentials. Commerce also requires the potential exporter to certify in the export application that the exported oil is deemed to be retained for purposes of FEA's Entitlements Program.

Exchange negotiations are limited by several factors, including: (1) Canada's decision to maintain the Sarnia/Montreal pipeline at full capacity; (2) Canada's current requirement that only U.S. domestic crude be received in exchange for Canadian crude; and (3) current limitations on available capacity in pipelines from the Gulf Coast.

In some cases, exchanges may be constrained because certain Canadian crudes can be transported by only a limited number of pipelines. Examples of operational constraints are: (1) certain Canadian crudes can be moved only in one direction; (2) the placement of natural gas plants requires that some condensates move along the specific lines, and (3) some heavy crudes must be cut with lighter crudes for pipeline efficiency. Operational constraints will become increasingly important in 1978 and 1979 in determining whether Canadian crude streams may actually be available to certain Northern Tier refiners, even if equal amounts of domestic crude oil can be obtained by those refiners for exchange.

In Canada, the Trans-Mountain, Rangeland, and Interprovincial pipelines currently move crudes from Alberta and Saskatchewan into the Northern Tier States. Several exchange possibilities would permit continued use of these lines as well as guaranteeing first priority refineries sufficient volumes of Canadian crude to meet their requirements for 1977-1980.

Another option for exchanges is the utilization of the Portland pipeline from Portland, Maine to Montreal. This pipeline has a current capacity of 504,000 B/D. In 1976 throughput was 472,000 B/D, but this may decrease

to 222,000 B/D in 1977 as a result of the completion of the Sarnia/Montreal pipeline. Foreign or domestic crude owned by U.S. companies could be transported via this spare capacity in the Portland line to meet the needs of Montreal and the Quebec area. This would also alleviate the bottleneck problems in the Lakehead system and meet both Canadian and U.S. needs.

Yet another option is transportation of crude from the Gulf Coast to the Lakehead pipeline and then to Montreal. This presents problems due to the limited spare capacity in pipelines to Chicago. Spare capacity from Cushing and Patoka, Illinois, is anticipated to be tight in 1977 and will become even tighter in 1978 and 1979. Possible solutions to this problem would be conversion to crude service of the Explorer product pipeline, a 28-inch line from Houston to Tulsa and a 24-inch line from Tulsa to Chicago. The Explorer Pipeline Company has informed FEA that it has sufficient spare capacity to carry up to 55,000 B/D of crude oil from the Gulf Coast to Chicago, if commitments totalling 30,000 B/D for six months are made by the refiners to warrant the additive investment by Explorer to provide this capacity. The crude would then move into Canada if sufficient volumes of Canadian crude were displaced through the Rangeland/Glacier, and Minnesota lines, thus making additional capacity available on the Lakehead system. This arrangement would make possible exchanges in which Gulf Coast crude were made available to Sarnia and the Quebec area, in return for additional Alberta sweet crude to Montana, North Dakota, Minnesota and Wisconsin.[6]

The Government of Canada is very hesitant to approve exchanges which would depend on crude oil other than U.S. domestic. This restriction on exchanges is significant because spare pipeline capacity from the Gulf of

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[6] See footnote 5.

Mexico through Chicago is not adequate to provide domestic crude sufficient to meet all of the potential for Canadian exchanges. Canada has, however, recently indicated a willingness to consider exchanges for foreign crude if certain conditions are met, including full utilization of U.S. midcontinent pipelines.

To date the FEA has approved a total of 80,000 B/D of import licenses to fulfill exchange applications by nine Northern Tier refiners. In addition, four U.S. refiners have recently applied to the FEA and to the NEB for exchanges totaling 49,000 B/D of foreign oil to be delivered in Montreal for Canadian oil to be delivered at their refineries. Approval of these recent applications would depend on a change in Canadian policy. The U.S. and Canadian governments are currently discussing this possibility.

b. *Use of Indigenous Crudes in the Northern Tier States*

One possible solution to the crude oil supply problems of the Northern Tier refineries is the redistribution by FEA of indigenous crude oil produced in Michigan, Montana, North Dakota, and Wyoming to the refineries most in need of additional crude oil in the Northern Tier States. Although crude oil reserves and production for these States, with the exception of Michigan, are projected to decline gradually over the years, there would still be sufficient crude oil in 1978 and 1979 to reduce significantly the impacts produced by the Canadian export cutbacks (assuming transportation is available to reallocate to those refineries that have no alternative means of incremental supply). Reserves and production data for these four States for the years 1970-1975 are shown in Table XI.

FEA regulations (10 CFR 211.63) currently require that domestic crude oil production be available to pur-

TABLE XI

RESERVES AND PRODUCTION DATA

	MICHIGAN		MONTANA		NORTH DAKOTA		WYOMING	
Year	Reserves (MB)	Production (MB/CD)	Reserves (MB)	Production (MB/CD)	Reserves (MB)	Production (MB/CD)	Reserves (MB)	Production (MB/CD)
1970	45,615	32.0	241,529	103.8	192,377	60.3	1,017,359	424.1
1971	58,765	32.6	228,185	94.8	174,011	59.3	996,985	396.4
1972	62,002	35.6	241,248	92.9	166,033	56.5	949,779	373.8
1973	72,444	39.7	219,343	94.8	179,520	55.4	916,763	378.2
1974	82,299	49.6	207,389	94.7	172,794	54.0	903,360	377.4
1975	93,312	67.2	163,968	88.4	158,245	54.9	877,385	357.4

chasers who historically purchased the crude. This supplier/purchaser freeze has been considered essential to the enforcement of price and allocation policies mandated by Congress; however, alternatives have not been carefully evaluated and other mechanisms may be feasible. To the extent that current regulations result in crude oil being shipped to a refiner who has access to alternate non-Canadian sources of supply, and thereby precludes its being shipped to a Northern Tier refiner who does not have such access, a hardship may result for petroleum product consumers. Thus it is possible that an exception to or a modification of this regulation may be justified in certain circumstances involving certain Northern Tier refiners.

Table XI shows the crude oil reserve and production data from 1975 for the states of Michigan, Montana, North Dakota, and Wyoming. Table XII shows the distribution of 1975 crude oil production from these same

TABLE XII

DISTRIBUTION OF 1975 CRUDE PRODUCTION

Destination Origin	Michigan	Montana	N. Dakota	Wyoming
Michigan	65.5%			5.5%
Montana		32.4%		13.7%
North Dakota		4.3%	52.6%	
Wyoming		1.6%		32.7%
Minnesota/ Wisconsin		6.7%	17.7%	.4%
New York, Pennsylvania	15.1%	2.5%		
Illinois, Indiana, Kentucky, Tennessee, Ohio	19.4%	43.6%	26.8%	22.6%
Utah, Colorado		3.4%		10.7%
Other		5.5%	2.9%	14.4%
TOTAL	100.0%	100.0%	100.0%	100.0%

states. The total production of these four states in 1975 was 567,500 B/D, of which approximately 45.5 percent or 258,400 B/D, was distributed to other than Northern Tier states.

The following table presents estimated volumes in thousands of barrels of crude oil controlled, by type of producer by state for 1975.

	Producers w/Canadian Dependent Refineries in the Northern Tier *	Other Refineries	Independent Operators
Michigan	3,759	11,511	8,222
Montana	5,900	19,013	7,867
North Dakota	4,283	10,607	5,507
Wyoming	56,113	32,064	45,425

* Includes only the States of Michigan, Montana, Minnesota, North Dakota, Wisconsin, and Wyoming.

Refineries in the Northern Tier were being run at about 79 percent of capacity during 1975. Given the 1975 crude oil productior total of 567,500 B/D and estimated runs in 1975 of 620,800 B/D, the Northern Tier States could, hypothetically, have supplied approximately 91 percent of 1975 runs with indigenous crude oil from these four States.

Redistribution of indigenous crude oil could benefit those Northern Tier refineries which do not have alternate supply sources and might partially alleviate crude shortages in the Northern Tier. Implementing this alternative would, however, require a major reversal of some pipeline systems in northwestern Wyoming and, more likely, the construction of a new pipeline to ship lighter crudes into the Billings, Montana area. It could not, therefore, be an immediate solution to supply problems that may develop in Montana.

c. *Modification of the Mandatory Canadian Crude Oil Allocation Program*

The Mandatory Canadian Crude Oil Allocation Program (MCAP) was established by FEA to distribute equitably the remaining crude oil exports from Canada. The program provides for the allocation on a preferential basis of crude oil imported from Canada to priority classes of refiners and other firms for six-month allocation periods, commencing with the period beginning January 1, 1976. For each period, the FEA allocates Canadian crude oil by issuing Canadian crude oil rights to refiners and other firms with reference to the volume of Canadian crude oil processed or consumed by their refineries and other facilities in the base period (November 1, 1974, through October 31, 1975). Adjustments to base period volumes were permitted in certain cases where such volumes were not reflective of a firm's normal operations.

Under the program, the two classes of facilities dependent upon Canadian crude sources (and therefore eligible for allocations) are termed "first priority refineries" and "second priority refineries" and are distinguished by their current capability to replace Canadian crude oil with crude oil or alternative fuels from other sources. First priority refineries must demonstrate lack of access to adequate pipeline capacity and/or adequate marine docking facilities, and thus have no current capability to replace Canadian crude with other crude or alternative fuel. Refineries whose Canadian crude runs were less than 25 percent of their total runs in the base period are not considered sufficiently dependent on this Canadian crude oil to warrant being given first priority status in the allocation of Canadian crude oil to U.S. facilities. Second priority refineries are facilities that processed Canadian crude oil in the base period but do not meet the criteria for first priority status.

The allocation program provides that if the average total supply of crude oil available from Canada during

a six-month allocation period is less than the total base period supply, all first priority refineries are entitled to receive their full amounts with the shortages being shared by all second priority refineries on a pro-rata basis. Once the allocation entitlement of first priority refineries exceeds that supply, second priority refineries receive no allocations and first priority refineries share any shortfall on a pro-rata basis.

By reducing the allocation period from six months to quarterly, flexibility could be created to allow for adjustment to seasonal shifts in product demand and thus responsiveness to seasonal or spot supply problems. By increasing the number of priority classes, greater flexibility in differentiating among the needs of particular refineries could be achieved.

d. *Use of Unit Trains*

The use of unit trains is discussed in Section IV of this report, which discusses the short-term alternatives for the disposition of Alaskan North Slope oil. It is noted that unit trains may also be feasible for shipment of light foreign crude oil to Northern Tier refineries which are not designed for heavy North Slope crude oil.

6. *Refining Capacity*

As shown below, refining capacity in the Northern Tier States named in Section 18 totals about 3.3 million

(Thousand barrels per calendar day)

State *	Crude Capacity **	Sour Crude Capability ***
Illinois	1,182	440
Indiana	562	210
Michigan	150	45
Minnesota	262	210
Montana	156	140
North Dakota	59	25
Ohio	590	90
Washington	367	110
Total	3,320	1,270

* A small asphalt plant in Oregon is not included.

** *Oil and Gas Journal*, March 28, 1977, pp. 99-123.

*** FEA estimate.

B/D. Approximately 1.3 million B/D of sour crude oil (sulfur content above .5 percent) could be handled by refineries in these States. Factors affecting the willingness of refiners to process Alaskan North Slope crude include (1) physical capability to handle the sulfur and metallic impurities in the crude; (2) availability of competing indigenous crudes of similar properties; (3) availability of competing foreign crudes which could be delivered economically to refinery sites east and south of the Chicago refining center; and (4) product slate requirements. Possible imports of Canadian heavy oils also add to the uncertainty of the competitiveness of Alaksan North Slope crude. Of course, changes in refinery configurations could increase the ability of Northern Tier refiners to handle additional North Slope-type crude oil if economic factors were favorable.

Thus, although each of the proposed northern systems for the delivery of Alaskan oil could, with the construction of relatively short pipeline connections in addition to the major route, serve all portions of the Northern Tier, because of the factors noted above, it is not presently clear to what extent Alaskan North Slope oil would be delivered to this market, even if a pipeline route were provided.

D. *New England and Middle Atlantic States*

New England, with almost no regional refining capacity, relies on imports from foreign countries and the U.S. Caribbean, mainly of residual fuel oil, and on products shipped from the Gulf Coast and Mid-Atlantic States. Refineries in the Mid-Atlantic States of the East Coast depend on imports for about 90 percent of their crude feedstock. These refineries, however, supply only about 25 percent of total East Coast product demand. About 50 percent of East Coast demand is met by products from the Gulf Coast, and the remaining 25 percent by imports, mainly from the Caribbean area.

Because of the supply patterns described above, proposed systems to deliver North Slope crude oil to the Northern Tier States would have very little direct impact on the situation in New England and the Middle Atlantic States. Systems which would deliver increased amounts of North Slope and other domestic crude to the Gulf Coast would, to the extent they replace imports to those refiners which supply East Coast product markets, serve to reduce indirectly the dependency of New England and the mid-Atlantic States on foreign imports. The direct receipt of North Slope crude oil into the New England and Middle Atlantic States does not at this time appear economically feasible due to the high costs that would be associated with such long distance movements.

IV. *Short-Term Delivery System Proposals*

For the reasons discussed in Section V of this Report, none of the various pipeline proposals which are currently being studied as long-term delivery systems for North Slope crude could be completed by December 1977 when substantial quantities of North Slope crude oil will become surplus to the West Coast and must be shipped to areas other than PAD V. The earliest completion date estimated by proponents of these projects is December 1978, and, more likely, no west-to-east pipeline system would be operational until mid-1979 at the earliest. It is therefore essential that a short-term transportation system be in place by the fall of 1977 to handle the excess volumes.

There are three short-term alternatives for distributing volumes which cannot be absorbed by West Coast refiners:

—Distribution by railroad tank cars to the central United States;

—Distribution by tanker through the Panama Canal to the Gulf Coast or around Cape Horn to the Carribbean;

—Exchanges with foreign countries.

Each of these alternatives is discussed briefly below:

A. *Distribution by Tank Car to the Central United States*

Two proposals for shipment by tank cars are being considered by producers of the North Slope crude. Routes being considered are from Port Westward or Portland, Oregon to Minot, North Dakota, and from Los Angeles to refineries in the Southwest and Midwest. The Port Westward-Minot proposal could also benefit refiners in Montana.

The Portland-Minot proposal would require a substantial expansion in port facilities to offload more than 30-35 MB/D. This would raise substantial environmental questions concerning air and water quality at the mouth of the Columbia River. In addition, the only economic mode of transporting large quantities of crude oil by rail would be by "unit train" (a train made up only of tank cars). Department of Transportation regulations on the transportation of hazardous materials which presently require that "buffer" cars that are either empty or loaded with a non-hazardous material be used on unit trains, substantially increase shipping costs. Both the Burlington Northern and Southern Pacific Railroads have petitioned the Materials Transport Bureau for exemptions from these regulations (49 CFR 174.90 et seq.).

B. *Tankers*

Two tanker alternatives, shipment of North Slope crude from Valdez, Alaska through the Panama Canal to the Gulf Coast, and shipment around Cape Horn to the Caribbean have been proposed as interim methods of

providing for use of North Slope crude oil by refineries which supply the eastern United States. In the Gulf Coast plan, crude oil would move in large tankers from Valdez, Alaska, to a point off the coast of Panama, where, because of draft limitations in the Panama Canal and at Gulf Coast ports, it would be transferred to smaller tankers, moving through the Canal to the Gulf Coast. The transfer to small tankers would not be necessary if the Cape Horn route were used to transport the oil to certain Caribbean refiners.

Alaskan crude oil landed on the Gulf Coast could be used by refineries in that area to displace imports. Gulf Coast refiners supply petroleum products to most of the eastern third of the United States. In addition, crude oil landed on the Gulf Coast could displace domestic crude oil moving to the Gulf Coast refineries from the Permian Basin in west Texas. These volumes might be redirected to midcontinent refineries which serve portions of the Midwest and Northern Tier areas.

Section 27 (the Jones Act) of the Merchant Marine Act of 1920 requires that all marine trade between U.S. ports, whether coastwise or intercoastal, be strictly limited to U.S.-built and documented vessels owned by U.S. citizens. In addition to vessels engaged primarily or exclusively in this domestic trade, there are also U.S. flag vessels engaged in the U.S. foreign trade which satisfy the Jones Act requirements. Such foreign trade vessels clearly may be used in the domestic trade unless they are or have been subsidized pursuant to the Merchant Marine Act of 1936.

The 1936 Act established two types of direct subsidy program: one for the operation of U.S. flag vessels in the foreign trade, and one for the construction of U.S. flag vessels for use in that trade. While not prohibiting the use of vessels subsidized under either program in the domestic trade, the statutory provisions of these programs

do place some limitations on the transfer of subsidized vessels to the domestic trade, involving mainly suspension or repayment of subsidy. U.S. flag ships which receive such construction differential subsidies ("CDS") and operating differential subsidies ("ODS") may be used in marine trade between U.S. ports only (1) for six months in any year, (2) upon condition that they repay a prorated portion of the construction subsidy and forego the operating subsidy, and (3) if the Secretary of Commerce makes a finding that such action will further the purposes of the 1936 Act.

Recent studies by the Maritime Administration (MARAD) indicate that the domestic tanker fleet will not be sufficient to transport to the Gulf Coast those volumes of crude oil that will be excess to the needs of PAD V. Because of inadequate tonnage in the U.S. domestic tanker fleet, MARAD will promulgate a proposed rulemaking to establish procedures for approving the transfer of CDS and ODS tankers to the domestic service, upon application. (Such promulgation may have occurred by the time this report is printed and distributed.) Final regulations for such transfers should be in effect by the end of May 1977. It is anticipated that, once the procedural rules and guidelines are in place, applications can be processed within a short time of receipt, and there need not, therefore, be any undue delays in obtaining authorizations for use of CDS and ODS tankers, if they are required.

C. *Exchanges with Foreign Countries*

In passing the legislation authorizing construction of the Trans-Alaska Pipeline, Congress amended Section 28 of the Mineral Leasing Act of 1920 to prohibit exports of oil transported over rights-of-way granted pursuant to the Act, except that which is exported (1) temporarily to an adjacent country solely for reasons of convenience

or increased efficiency of transportation across the adjacent country for reentry into the U.S., or (2) is exported to a non-adjacent country pursuant to the limitations of the Export Administration Act of 1969 and after the President has published an express finding that such exports will not diminish the total quantity and quality of petroleum to the United States and are in the national interest. In the case of exports to a non-adjacent country, the President's decision to allow exports must be submitted to the Congress, which may disapprove that action by the passage of a concurrent resolution stating disagreement with the President's national interest finding within 60 days of submission.

At the present time, the potential for exchanging North Slope crude with oil from the adjacent countries of Canada and Mexico is negligible. In the near term, exchanges of North Slope oil with Canada would require it to be transported to the eastern provinces, the only area with access to the sea where Canada has refineries capable of processing it. With regard to Mexico, there do not presently exist the transportation systems that would be necessary to exchange significant volumes of oil.

There has, however, been some suggestion of the possibility of exchanges with Japanese or other Far Eastern refiners of Alaskan oil for Middle Eastern oil which would otherwise be delivered to the Far East. Under this exchange option, Alaskan oil would be traded to, say, Japan, on a barrel-for-barrel basis, for oil purchased by Japanese refiners in the Middle East, which oil would then be shipped to the Gulf Coast. To date, the President has made no decision with respect to whether such exchanges should be recommended.

Such exchange transactions could potentially result in transportation cost savings, inasmuch as the combined tanker costs from Valdez to the Gulf Coast and from the

Persian Gulf to Yokohama appear to be somewhat greater than the combined costs of the Valdez-Yokohama and Persian Gulf-Gulf Coast voyages. The exact amount of the transportation savings would, however, depend upon the extent to which U.S. or foreign flag tankers are used. (In FEA's report to the Congress on April 15, 1977, regarding the pricing of Alaskan North Slope oil, the transportation savings was estimated to be $1.31 per barrel using foreign flag tankers for both legs of the exchange and $.54 using U.S. flag tankers for the Valdez-Yokahama leg only.) If exchanges were approved, it is possible that some of these transportation savings would have to be shared with the United States' exchange partners in order to induce their participation.

If foreign exchanges are approved at all, the President might want to impose certain limitations on their terms and conditions. For example, it may prove appropriate to impose a limitation on the time period that exchanges would be approved, in order to provide the maximum encouragement for the construction of one or more permanent transportation systems on the North American continent to move Alaskan crude oil to the interior of the U.S. It might also be desirable to "capture" some of the transportation savings of foreign exchanges for the benefit of consumers, rather than the North Slope producers, by making appropriate adjustments in the entitlements program. Exchange terms might also be structured so as to allow the U.S. to terminate the exchange in the event that another embargo is imposed on the U.S.

Except to the extent that the transportation savings of exchanges are captured and passed on to all consumers through the entitlements program, the effect of exchanges on the Northern Tier States appears to be no different from that of the proposed shipment of North Slope oil through the Panama Canal, since in either case the incremental supply of oil obtained from the North Slope would be landed on the Gulf Coast of the U.S.

V. *Long-Term Delivery Proposals*

A. *General*

A number of proposals have been made for west-to-east crude oil pipelines in the United States. Some of these proposals are designed primarily to provide a solution to the problems faced by Northern Tier refineries as a result of the phase-out of Canadian exports; others are designed primarily to deal with the excess of crude oil supply on the West Coast. It should be noted that most of the proposed projects would not handle Alaskan North Slope oil exclusively. In fact, because many Northern Tier refineries were designed for sweet Canadian crudes, the Northern pipeline proposals all contemplate shipment of large quantities of imported light, sweet crude oil (as well as North Slope oil) to replace the declining Canadian imports, at least until such time as Northern Tier refineries are reconfigured to process heavier and higher sulphur crude oil.

Geographically, the proposed projects may be grouped into two categories:

1. Projects primarily proposed to move imported and Alaskan crude oil from the West Coast to the Northern Tier and upper Midcontinent areas. These projects are:

   a. Kitimat Pipeline.

   b. Reversal of Trans-Mountain Pipeline.

   c. Northern Tier Pipeline.

2. Projects primarily proposed to move available Alaskan crude oil from the West Coast to the Gulf Coast and lower Midcontinent areas. These projects are:

   a. Sohio Pipeline.

   b. Central American Pipeline.

In addition, there are several proposed projects designed to move crude oil to the upper Midcontinent and Northern Tier areas from the South. These include Loop and Seadock deepwater terminal proposals offshore in the Gulf Coast area, and proposed expansions in the Williams and Minnesota Pipelines. While these projects are not necessarily designed to transport Alaskan crude oil, each has the potential for making crude oil available to refiners in the upper Midwest area to compensate for the reductions in Canadian imports. However, since these projects are designed primarily as delivery systems for Gulf Coast or imported crude oil, only the Williams Pipeline, which will serve a few refineries in the Northern Tier and which could potentially accept Alaskan crude oil delivered to the Gulf Coast area through pipeline inter-connections, will be included in the following discussion of long-term delivery systems. The Central American Pipeline proposal is also not discussed inasmuch as this proposal would have the same impact on crude oil supply to the Northern Tier States as delivery by tanker through the Panama Canal to the Gulf Coast.

The location of all of the previously mentioned long-term options is depicted on Figure 1.

Some long-term delivery projects are in an advanced stage of the Federal approval process, such as the Sohio project, which made application for Federal approvals as early as May 1975. Other projects, such as the Northern Tier Pipeline, have not yet applied for any Federal permits. Table XIII is a comprehensive list of permits and approvals required by Federal agencies with respect to the construction of marine terminals and/or pipelines.

The Federal permitting process for marine terminal and pipeline facilities must be viewed as an integrated process, driven in large part by the environmental review process. Under Section 102(2)(C) of the National En-

Crude Supply Alternatives for Disposition of Alaskan Oil

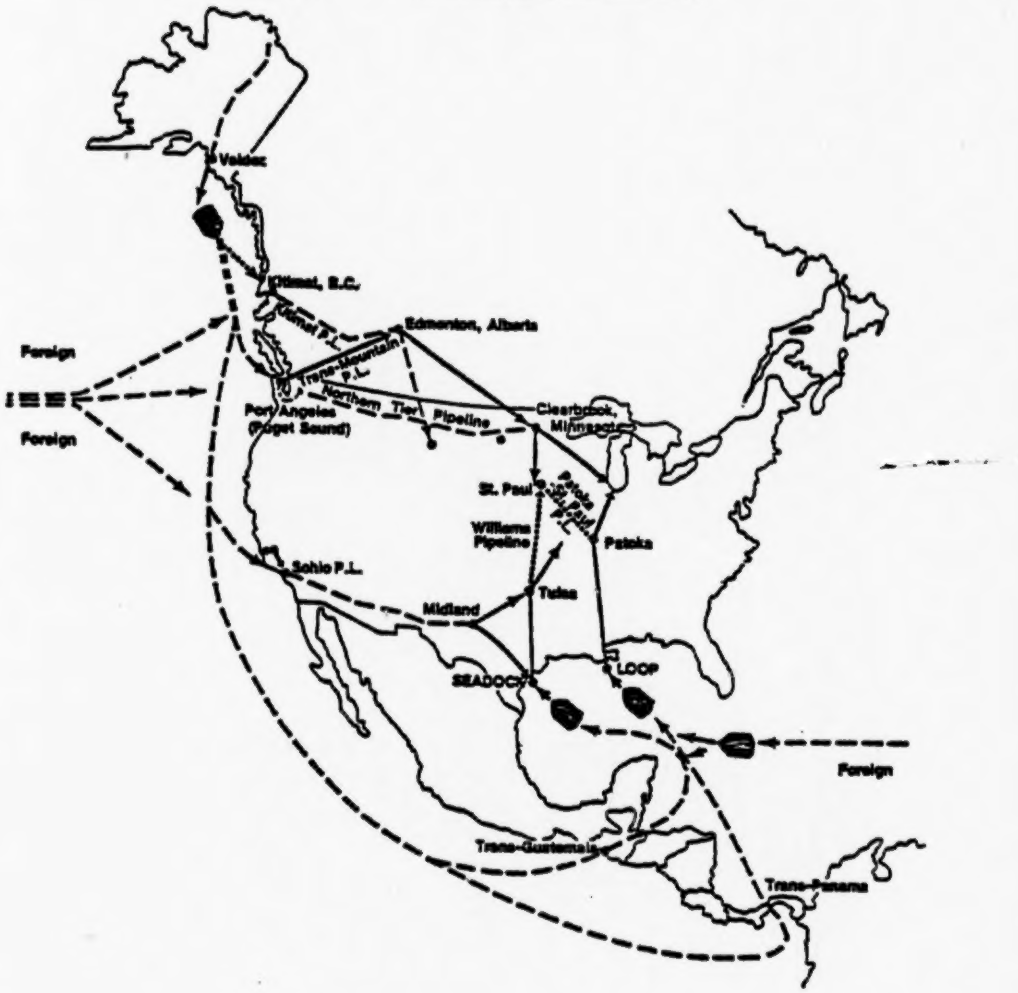

FIGURE I

TABLE XIII

Federal Agencies Having Project Approval Requirements [1]

Agency	Activity Requiring Approval	Form	Code of Federal Regulations
U.S. Department of Agriculture			
Forest Service	Construction of related facilities on National Forest System lands	Permit	36 CFR 251, et seq.

[1] Whether or not specific agency approvals will be required will depend upon the proposed project, the route selected, and the location of facilities. It should not be understood from this, therefore, that projects would necessarily require all permits listed here. Also, pursuant to Section 28(c)(2) of the Mineral Leasing Act of 1920, as revised, where the surface of the Federal lands involved in a project is administered by the Secretary (DOI) or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved to grant or renew rights-of-way or permits through Federal lands involved. This does not, however, apply to lands in the National Park System, lands on the OCS or Indian lands. The Secretary's authority under this section has been delegated to the Director, Bureau of Land Management. In addition, in granting rights-of-way involving public lands, consideration must be given to the policies and guidelines spelled out in the Federal Land Policy and Management Act of 1976, P.L. 94-579 (90 Stat. 2743), and the specific requirement of that law which must be met. The pertinent sections are: Section 102(a)(8), (9), and (11); Section 202(a); Section 503; Section 603(a)(c). Other land laws and regulations to be adhered to are: Wild and Scenic Rivers Act; 82 Stat. 906. Endangered Species Act; 16 U.S.C. 1531. Antiquities Act; 34 Stat. 225, as amended; 16 U.S.C. 431-433. Alaska Native Claims Settlement Act of 1971; 43 U.S.C. 1601. Land and Water Conservation Fund Act as amended; 16 U.S.C. 460-1. Sikes Act; Title II; 16 U.S.C. 670. O and C Act; Act of 1937; 50 Stat. 874. Taylor Grazing Act; 43 U.S.C. 315.

Agency	Activity Requiring Approval	Form	Code of Federal Regulations
	Road construction or use of roads in National Forest System lands	Permit	36 CFR 212, et seq.
	Removal of mineral or vegetative materials from National Forests	Permit	36 CFR 251.4 36 CFR 221, et seq.
	Use of off-road vehicles on National Forest System lands	Permit	36 CFR 295, et seq.
Department of the Army			
Corps of Engineers	Construction of Port Facilities	Permit for work in navigable waters	33 CFR 209.120
	Pipeline construction across navigable rivers	Permit for work in navigable waters	33 CFR 209.120
	Pipeline construction across military lands	Easement	32 CFR 552.50, et seq.
Environmental Protection Agency	Transfer piping to storage tanks [2]	Permit to construct	40 CFR 112
	Installation of storage tanks [2]	Permit to construct	40 CFR 52.233
	Operation of storage tanks [2]	Permit to operate	40 CFR 60
	Operation of pumping equipment [2]	Permit to operate	40 CFR 60
	Wastewater discharge	Permit	33 CFR 209.120

[2] In States where authority to issue these permits under the Clean Air Act has been delegated, a State or local agency would exercise this responsibility under standards at least as stringent as those that would be imposed by EPA.

Federal Agencies Having Project Approval Requirements — Continued

Agency	Activity Requiring Approval	Form	Code of Federal Regulations
U.S. Department of the Interior			
Bureau of Reclamation	Pipeline construction across lands under Reclamation's jurisdiction	Easement, lease, license or permit	43 CFR 230
U.S. Department of the Interior			
Bureau of Indian Affairs	Pipeline construction across tribal, individually owned and Federally owned Indian lands	Easement	25 CFR 161
Fish and Wildlife Services	Pipeline construction across certain rivers	Easement	43 CFR 2800
	Pipeline construction across National Wildlife Refuge system lands	Easement	50 CFR 29
Bureau of Land Management	Pipeline construction across public lands administered by the BLM	Easement or permit	43 CFR 2800 and 2880 43 CFR 288 (pending)
National Park Service	Pipeline construction across National Park lands	Easement	36 CFR 5.7 (In some instances, legislation may be required)

Department of Transportation			
Federal Aviation Administration	Permit to construct microwave transmission towers	Notification of construction	14 CFR 77.13
U.S. Coast Guard	Operation of marine facility	Approval of operation	33 CFR 160 and 161
	Construction of pipelines over navigable waters	Permit to construct	33 CFR 114 and 115
Federal Communications Commission			
Safety and Special Radio Services Bureau, Common Carrier Bureau	Operation of Microwave, Mobile Radio Systems and possible Satellite-Earth terminals	Construction permits and licenses	47 CFR Parts 25, 91 and 94

vironmental Policy Act of 1969 (NEPA), all agencies of the Federal Government are required to

> "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on:
>
> (i) the environmental impact of the proposed action;
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
>
> (iii) alternatives to the proposed action;
>
> (iv) the relationship between local short-term uses of man's environmental and maintenance and enhancement of long-term productivity; and,
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

Guidelines established by the Council on Environmental Quality (CEQ) suggest that whenever a major action which could have a significant impact on the environment requires permits from more than one Federal agency, consideration be given to designating a single lead agency to supervise the preparation of the environmental impact statement for the entire project. This process is triggered by application by project sponsors for the necessary permits. The environmental review is performed while the various agencies consider permit applications and the results of that review must be taken into consideration in the decision to grant or deny such permits. While the other criteria for granting of the rights-of-way and permits required may be relatively clear, environmental considerations frequently require

examination of alternate routes or engineering and design modifications.

The drafting of an EIS for a terminal and pipeline facility is a major undertaking, and for a major marine terminal and pipeline proposal often requires a year and a half to two years to complete. The draft EIS must be made available for interested parties for a minimum of 45 days to review and comment upon, prior to preparation of the final statement. A final EIS must then be prepared, incorporating comments received on the draft EIS, and the agency's response to the comments. Following publication of the final EIS, a 30-day review period is required by the CEQ before any administrative decisions to approve the project may be made.

B. *Specific Proposals*

1. *Kitimat Pipeline Proposal*

a. *Description*

The Kitimat Pipeline proposal was conceived as a means of delivering North Slope as well as imported crude oil to refineries in the Northern Tier. Participants in the project include five of those refiners.

The Kitimat Pipeline would involve the construction of a marine terminal in Kitimat, British Columbia and a 753-mile pipeline which would connect with the Interprovincial Pipeline in Edmonton, Alberta. The Interprovincial line runs from Edmonton to Montreal, with connections to pipelines serving U.S. refineries. The proponents have completed engineering and environmental studies for the proposal.

The Kitimat line is designed to have an initial throughput capacity of 300,000 B/D, increasing to 600,000 B/D within 1 to 2 years. Proponents anticipate transporting approximately 70 percent Alaskan crude oil or 210,000-

420,000 B/D, with the remainder to include imports from Indonesia and other foreign sources.

b. *Pipeline Connections*

The Interprovincial Pipeline presently has substantial spare capacity (approximately 350,000 B/D) from Edmonton, where the Kitimat line would join the system, to Chicago. The amount of spare capacity is projected to increase with the decline in Alberta oil production, thus providing the additional throughput capacity that will be required if the Kitimat expansion plan is to become effective. Other connections proposed include the Rangeland-Glacier Pipeline System, serving north central and central Montana (at least 70 miles of new pipe in Alberta is required for this interconnection), the Wascana Pipeline System, which connects with the Midwestern distribution system, and the Minnesota and Lakehead Systems, serving Minnesota, Wisconsin, Illinois, Indiana, and Michigan.

c. *Refinery Capacity*

Refinery capacity in Montana, North Dakota, Minnesota, Wisconsin and Michigan (Kitimat's primary market area) exceeds 600,000 B/D. Kitimat could also deliver Alaskan crude oil to the Chicago area, where refinery capacity is approximately 1 million B/D. The Chicago area also has access to other sources of crude, including Canadian and Midcontinent, as well as Gulf Coast sources, although pipelines running to Illinois and Indiana from these areas now run at or near capacity. Other potential sources for refiners in Kitimat's proposed market area include volumes of heavy Canadian crude which may continue to be available beyond the scheduled phase-out of Canadian exports, as well as volumes which may be transported from the Midcontinent area via the expanded Williams Pipeline.

As noted above, some refiners are not equipped to process Alaskan North Slope crude. Therefore, depending upon the start-up of alternate supply systems to the upper Midwest, and the capability and timing of refinery conversions on the Northern Tier, it is not clear what amount of North Slope oil will be desired to serve the crude needs of all the refiners in the central Northern Tier area.

d. *Allocation of Benefits of Alaskan Oil*

The direct benefits of Alaskan crude oil distributed under the Kitimat proposal would be to refiners in the Northern Tier. The extent of the realization of those benefits would depend upon price considerations and the ability of Kitimat to deliver Alaskan crude at a cost which would compete with other sources of supply.

Indirectly, the Kitimat project could provide some benefit to regions of the country other than the Northern Tier States in the event of an embargo, through the displacement of some domestic crude oil, presently delivered to midwestern refineries from producing areas in the Gulf Coast and Midcontinent, with Alaskan crude oil. Such crude could then be allocated to replace embargoed imports elsewhere.

e. *Permitting Process*

Inasmuch as the Kitimat proposal involves a Canadian marine terminal and pipeline route only, construction of the facilities requires no U.S. Government permits. The only Canadian permits required are a certificate of public convenience and necessity which would be granted by the National Energy Board (NEB) if approved by the Governor in Council (the Cabinet), and a license to construct a marine terminal which would be issued by the Minister of Transport. The Government of Canada has also ordered an independent public inquiry into the effect of the proposal on the marine environment. The results

of this inquiry, as well as a review of the project which is being conducted by the Ministries of Transport and Fisheries and Environment, are to be delivered to the Government by early 1978 and will be taken into consideration by the Cabinet if the NEB recommends certification of the pipeline proposal. The NEB has advised FEA that it expects to either disapprove the proposal or recommend approval to the Government in early 1978. Final Government action on the proposal could then take place as early as January 1978. Kitimat proponents believe that construction could be completed 21 months following approval, which could result in operation in late 1979 or early 1980.

2. *Trans-Mountain Reversal*

a. *Description*

The Trans-Mountain Reversal proposal is a three-phase proposal by the Atlantic Richfield Co. and Trans-Mountain Pipeline Co., involving reversal and looping of the Trans-Mountain Pipeline, which presently delivers oil from Edmonton, Alberta to Canadian refineries in the Puget Sound area. In its initial phase, proposed for January 1979, the project would involve alternating the flow of the pipeline to continue deliveries of light, sweet Alberta crude to the Vancouver refineries, while alternately delivering 160,000 B/D of Alaskan crude from Cherry Point, Washington to Edmonton for distribution through the Interprovincial System.

Phase II, proposed for January 1980, would eliminate alternating flows and operate exclusively from West to East. Phase II assumes the construction of additional pipeline capacity from Cherry Point to a point on the Trans-Mountain Line, just over the Canadian Border, and would require the Vancouver refineries to be willing to receive their supplies through exchanges for U.S. or imported light, sweet crude oils that would be delivered

to them via Cherry Point. During Phase II, 350,000 B/D of Alaskan and imported crude could be delivered to Edmonton.

Phase III, proposed for January 1981, requires further construction of additional capacity from Cherry Point to Edmonton, and anticipates delivery of 950,000 B/D to Edmonton.

The proposal contemplates receipt of crude oil at Arco's Cherry Point Terminal, and would require construction of an additional berth and storage facilities. This project is in early development stages. Engineering and environmental studies have not been completed.

b. *Refinery Capacity*

The Trans-Mountain line presently delivers Albertan crude oil to three refineries in Vancouver, British Columbia. There are also four U.S. refineries in the Northern Puget Sound area which are connected to the Trans-Mountain line but, with the exception of small quantities of Canadian crude received by one such refinery through exchanges, presently are served entirely by tanker deliveries of imported or Alaska Cook Inlet oil. Total refinery capacity (including the Canadian refiners) in the area is 450,000 B/D. Under this proposal the Canadian refineries would continue to receive the Albertan crude they presently use, until Phase II. Only one of the U.S. refineries, Atlantic Richfield Company's Cherry Point facility, is designed to process Alaskan-type crude exclusively (100,000 B/D). The other U.S. refineries in the area (as well as the Canadian refineries after Phase II) would continue to receive mostly imported light, low-sulphur crude, or could be converted to process Alaskan crude. The capacity of refiners in the remaining Northern Tier States to accept volumes shipped through to Edmonton, and from there through the Interprovincial

system, would be as discussed under the Kitimat proposal, above.

c. *Pipeline Connections*

Same as for Kitimat.

d. *Allocation of Benefits of Alaskan Crude Oil*

Direct benefits of Alaskan crude to be distributed by this proposal would accrue to refineries in the Northern Tier only, and would be similar to those of the Kitimat proposal discussed above, except that, in the initial stages of the Trans-Mountain reversal, the volumes would be less. As would be the case with the Kitimat proposal, the extent to which those benefits would be realized will depend upon the price at which Alaskan crude could be delivered to refineries for which alternative sources are available. Indirect benefits to other regions in the event of an embargo would be similar to those of the Kitimat proposal.

e. *Permitting Process*

The proposal will require permits for construction of additional marine facilities on Puget Sound. Permits are required from the Corps of Engineers, and from the State of Washington, which has been delegated authority by EPA to issue NPDES (wastewater discharge) permits and approvals for the construction and operation of new sources of air emissions.

The State of Washington certificates the siting, design and operation of all new energy facilities through a single proceeding conducted by the Energy Facility Site Evaluation Council (EFSEC), under the authority of the Washington Energy Facility Siting Act. EFSEC makes a recommendation to the Governor, who has final certification authority. The State has a Coastal Zone Management Plan, approved by the Secretary of Com-

merce, as contemplated by the Coastal Zone Management Act, (P.L. 94-370). The Plan designates Port Angeles, Washington as the approved site for all new and expanded marine terminals in the State, and, if enforceable, would require amendment before a facility at Cherry Point could be approved. That aspect of Washington's Coastal Zone Management Plan has been questioned by some parties opposed to the Port Angeles site as being defective in the procedures by which it was adopted.

In addition, a Washington State law prohibiting tankers of greater than 125 M DWT from operating within the inner Puget Sound is presently being appealed to the United States Supreme Court following a three-judge federal district court determination that Federal law preempts such State regulation. If the law is ultimately upheld, it might tend to render the proposal economically unattractive, since Atlantic Richfield's proposal is based on the use of 165,000 DWT tankers to deliver oil to Cherry Point. There is environmental opposition to the use of Cherry Point terminal site due to the potential for and particularly adverse consequences of oil spills within the Puget Sound, which could delay EFSEC's action. Finally, an NEB certificate of public convenience and necessity is required for the reversal of the Trans-Mountain Line in Canada.

No applications have yet been filed for any of the necessary permits in either the United States or Canada. The project's sponsors anticipate a filing with the NEB within the next few weeks. The NEB has indicated to FEA that when the Trans-Mountain application is received, it will be considered as a competitive application in the same proceeding and under the same schedule as its decision on the Kitimat proposal. The public inquiry into the marine aspects of the Kitimat proposal will consider the impact of the marine aspects of the Trans-Mountain proposal as well.

The proponents propose the construction of an additional tanker berth at Cherry Point that will require a permit from the Corps of Engineers. The proponents are of the opinion that this permit does not constitute a major Federal action that would require under NEPA the preparation of an EIS. The issue is debatable, however, and the failure to file an EIS could well be challenged by a coalition of local environmental groups that are opposed to tanker traffic in Puget Sound. The proponents have indicated that, if necessary, Phase I of the proposal could be operational without expanding the current docking facilities at Cherry Point.

The proponents believe that, with Canadian government approval by January 1978 and EFSEC and Corps of Engineers approved [sic] within 6 months of application, Phase I of the proposal could be operational by January 1979. If an EIS must be prepared, the completion date could be extended by several months.

3. *The Northern Tier Pipeline Proposal*

a. *Description*

The Northern Tier Pipeline proposal involves the construction of a port facility for receiving crude oil at Port Angeles, Washington, and a pipeline, 1,550 miles in length, which would connect with the Lakehead Pipeline System in Clearbrook, Minnesota. The proposed line could potentially serve the four U.S. refineries on the upper Puget Sound through the construction of a spur line from approximately North Bend, Washington to Anacortes, but that spur is not currently part of the pipeline design. The pipeline is designed to have an initial throughput capacity of 600,000 B/D and an ultimate capacity of 1.3 million B/D. Engineering and environmental studies are being prepared by proponents of the pipeline.

b. *Refinery Capacity*

The pipeline is designed to serve the same refineries in the Northern Tier States as the Kitimat and Trans-Mountain proposals. The Northern Tier project also depends for its economic viability on service to other refineries in the Midwest because of the limited amount of refinery capacity in the core of Northern Tier States.

The project's sponsors assume that refineries in Northern Tier States from Minnesota west would absorb 400,000 B/D of the pipeline's throughput, and that Mid-continent area refineries could absorb the remaining 400,000-800,000 B/D. Refineries in the Puget Sound area could also be served by the project, if some mechanism is utilized to induce or require these refiners to use the pipeline rather than their own dock facilities. As noted above, about one-quarter of the 450 thousand B/D refining capacity in the Puget Sound area can currently run Alaskan North Slope crude.

c. *Pipeline Connections*

The system would interconnect with the Rangeland-Glacier and Butte pipeline systems in Montana and the Minnesota and Lakehead systems serving refineries in Minnesota, Wisconsin, Illinois, Indiana and Michigan.

d. *Allocation of Benefits of Alaskan Crude Oil*

The direct benefits of the Northern Tier proposal would be available to refineries in the Northern Tier and Midwestern States and would be similar to those anticipated by the Kitimat and Trans-Mountain reversal proposals; however, the economics of this proposal require it to be competitive with other crude oil delivery systems to the Chicago area, whereas Kitimat and Trans-Mountain expect to be able to operate even if their only market is the rest of the Northern Tier. Indirect benefits to

other regions would also be similar to the Kitimat and Trans-Mountain proposals.

e. *Permitting Process*

The full range of Federal permits outlined in the introduction to this chapter would be required for the Northern Tier project.

The pipeline's sponsors have applied for a Site Certification with the Energy Facility Site Evaluation Council in the State of Washington, which, as noted, has been delegated authority to issue the permits required by EPA as well as to carry out its own siting statutes. The permitting process in Washington State may be delayed because of opposition from some State and local officials to the Port Angeles site for the marine terminal. Indeed, Clallam County, in which Port Angeles is located, has already filed suit against the Northern Tier proponents and the State in an effort to prevent the State from certificating Port Angeles as the terminal site. However, the Port Angeles site is favored by some environmental and legislative groups within the State as an alternative to current and expanded tanker traffic into the inner Puget Sound to serve the refineries at Cherry Point and elsewhere.

Only one Federal permit (the easements required from the Bureau of Land Management) has been applied for to date (April 22, 1977). The project's proponents have held preliminary discussions with the Department of the Interior (DOI), which would be the lead agency in supervising preparation of the environmental impact statement for all Federal agency actions involved in the permitting process, and DOI is prepared to proceed expeditiously with the environmental review upon receipt of an application and the payment of fees. All Federal agencies which will be involved in the permitting process have agreed to coordinate their efforts and preparation is

being made, notwithstanding the fact that no formal application has been filed, to expedite the preparation of the EIS to the extent possible.

4. *The Sohio Proposal*

a. *Description*

Standard Oil Company of Ohio (Sohio) owns over 50 percent of the Alaskan North Slope production, and has proposed a transportation system designed primarily to move that production east from the West Coast to the Gulf Coast area.

The project contemplates construction of a marine facility in Long Beach, California and a pipeline connection to an existing Southern California Gas Company natural gas line. This line, and an El Paso Natural Gas Co. line to which it connects, would be converted to crude oil service to Jal, New Mexico. Approximately 200 miles of new pipeline would be constructed from Jal to Midland, Texas, to complete the 1,000-mile system from Long Beach.

The pipeline is designed for a throughput capacity of 500,000 B/D, and the marine terminal is designed for an initial throughput of 700,000 B/D, 200,000 of which would serve existing local refineries. Engineering studies and environmental impact statements required under both Federal and State law are nearing completion. Exxon Pipeline Company has agreed to be a minority participant in the preconstruction aspects of the project.

The Sohio project also involves the prospect of a Phase II that would require the conversion of a second El Paso gas line and the expansion of the marine terminal facilities. Under Phase II, a million B/D could be transported to Midland. Phase II is only in the very early stages of planning, and a decision on whether or not to go ahead with it is not likely to be made until after Phase I is in operations [sic].

b. *Pipeline Connections*

Numerous pipeline connections in the Midland area, which is a center for crude oil distribution, could permit distribution to some refineries in the Northern Tier as well as Midwestern and Gulf Coast refining centers. Sohio concedes that this pipeline network is presently operating near capacity, but anticipates that declines in Permian Basin production in west Texas will result in an increased availability of pipeline capacity of 400 thousand B/D out of Midland by 1978; if this decline does not occur, Sohio proposes to expand existing pipeline capacity by installing additional pumping stations.

Most of the pipeline capacity out of Midland that would be freed by a decline in Permian Basin production would be to the Gulf Coast. However, the planned expansion in the Williams Pipeline would permit crude moved from Tulsa, Oklahoma to serve refineries in Minnesota and Wisconsin. Additional capacity would be required between Midland, Texas and Tulsa, Oklahoma to provide a direct link from the Sohio project to the Northern Tier area.

c. *Refinery Capacity*

PAD III refineries in the Gulf Coast area of the United States, which are the logical recipients of most of the crude proposed to be transported by the Sohio project, currently use approximately 2 million B/D of imported crude oil, much of it of a quality similar to North Slope crude oil. Minnesota and Wisconsin refineries which could be served via the Sohio and Williams Pipelines, could accept slightly under 200 thousand B/D of Alaskan-type crude.

d. *Allocation of Benefits of Alaskan Crude Oil*

The Sohio proposal could distribute crude oil directly to the Gulf Coast and Midcontinent, as well as States

located in the eastern half of the Northern Tier (from Minnesota eastward). Indirect benefits, from products refined in these areas, would be available to most States East of the Mississippi River.

e. *Permitting Process*

All of the Federal permits described in the introduction to this chapter are required for the Sohio project. In addition, the Federal Power Commission must approve the abandonment of the natural gas line by El Paso Natural Gas, provided the results of the environmental study indicate that such action would be appropriate and lawful. The great majority of Federal permits are relatively routine, and may be issued following final publication of an environmental impact statement. There are several major steps in the permitting process which are not yet complete, including the following:

(1) *Department of the Interior (DOI): EIS*

As lead agency, the DOI completed a draft EIS on all aspects of the Sohio project in November 1976; the final EIS is now expected to be completed by the DOI in May 1977. After the 30-day review period which follows final publication of the EIS, action on required permits could begin.

(2) *Federal Power Commission (FPC): El Paso Abandonment Proceeding*

Hearings concerning the abandonment of the El Paso line have been completed with respect to questions raised under the Natural Gas Act. Following the publication of the EIS, the hearings will be reconvened and briefs filed with respect to the environmental aspects of the abandonment. Under normal FPC procedures, an initial decision by the administrative law judge could be expected by late summer, 1977. Following the initial de-

cision, exceptions to the decision would be taken and the record would go to the Commission for a final decision, which would likely occur in late 1977. If certain expediting procedures which have been proposed are approved by the Commission, the proceedings could be completed 2 to 5 months earlier. (See Section VI for discussion of expediting procedures.) Final action on other Federal permits will not begin until after the FPC rules on El Paso's pipeline abandonment.

(3) *Environmental Protection Agency (EPA): Permits to Construct and Operate New Sources of Air Emissions*

Sohio's proposed marine terminal would be located in Long Beach, within California's South Coast Air Basin (SCAB). Air pollution in the SCAB exceeds the ambient air quality standards set by EPA under the Clean Air Act for all five "criteria pollutants." EPA has therefore designated the SCAB a non-attainment area with respect to these pollutants. Under an EPA policy announced in December 1976, permits for the construction and operation of large new sources of air emissions in non-attainment areas can be granted under stringent conditions which require, among other things, that sufficient offsetting emissions from existing sources be reduced so as to more than compensate for the emissions attributable to the new sources.

Where a State has promulgated new source review regulations that are at least as strict as EPA's guidelines, the EPA approves a State's regulations and permits it to take over the program. California's regulations are currently being reviewed, and EPA expects to decide upon delegation of new source review authority to California at some time in the future. Regardless of whether or not the State receives this authority, however, under

California State laws (which are not preempted by the Clean Air Act) the project would have to receive approval from the Southern California Air Quality Management District. This approval, in turn, is subject to review by the California Air Resources Board. The trade-off standards applied by these State agencies are similar to those enunciated in the EPA's policy statement.

Matters to be resolved before these agencies can proceed with permitting action include several areas in which new information and policy needs to be developed. These include:

—Air emissions associated with tanker operations;

—Measures to minimize these emissions, including tanker equipment and operational requirements;

—Authority and jurisdiction of State officials, EPA and/or and the Coast Guard to regulate tanker emissions;

—Criteria for qualification as offsetting emission reductions; and,

—Ways to assure that such offsetting reductions will occur.

State and Federal authorities are currently working closely together with the project's [sic] sponsor to resolve these uncertainties.

(4) *Bureau of Indian Affairs (BIA): Easements and Rights-of-Way*

The BIA is authorized, through the Secretary of the Interior, to grant rights-of-way for the construction, operation, and maintenance of pipelines for the conveyance of oil across any Indian Reservation, or lands held by an Indian tribe. The proposed pipeline will cross the Morongo and Agua Caliente Reservations in southern California.

It is anticipated that most of the needed easements and rights-of-way will be processed and issued as a matter of routine administrative procedure.

(5) *Corps of Engineers (COE): Dredging*

Development of an in-port marine terminal to accommodate Alaskan oil tankers will necessitate dredging and construction along the California coast. Such activity is regulated, not only by the California Coastal Zone Conservation Commission) [sic], but also by the COE and the State and regional Wate Quality Control Boards) [sic]. The COE regulates all construction and dredging in navigable waters, and must issue a permit for the improvements contemplated at the Port of Long Beach.

COE permit applications for the port construction have already been filed, and special procedures can be invoked to reduce processing time. COE permits will be issued in conjunction with DOI after completion of the El Paso abandonment proceeding.

5. *Williams Pipeline Expansion*

a. *Description*

The Williams Pipeline Company, which operates on an existing products pipeline system in the upper Midwest, has proposed a major expansion to transport crude oil from Oklahoma to Minnesota and Wisconsin.

The following five-step program has begun to be implemented:

1. 80,000 B/D under construction.
   4th quarter 1977:

   —123 miles of new 18-inch line from Mason City, Iowa to Rosemount, Minnesota. New power on an existing 12-inch Des Moines-Mason City line, to increase throughput capacity;

   —Add power to an existing 12-inch line from Ponca City, Oklahoma to Sioux Falls, South Dokota [sic], to increase conventional products throughput capacity;

   —Add power to the existing Minneapolis-Superior 8-inch line to provide an additional 10,000 B/D crude capacity to Superior.

2. 120,000 B/D under construction.
   1st Quarter 1978:

   —All of the 80,000 B/D case investment; plus

   —Move crude to existing 16-inch line from Tulsa to the Northern Tier and add power for higher throughput.

3. 190,000-350,000 B/D proposal.

   (No firm schedule)

   —All of the 80,000 B/D case investment; plus

   —Install 503 miles of 24-inch line from Barnsdall, Oklahoma to Mason City, Iowa; provide additional power on 18-inch line from Mason City to Rosemount, Minnesota.

   —Install additional power on Barnsdall-Mason City 24-inch line.

4. Supplement to 2 or 3 above as required:

   —Install 70 miles of 24-inch pipeline from Cushing, Oklahoma to Barnsdall or Tulsa.

Williams has also proposed to power the 8-inch Minneapolis-Superior line to full capacity to provide 10,000 B/D crude capacity to the Superior area.

Although not part of the Williams proposal, additional capacity to supply the Continental refinery at Wrenshall, Minnesota and the Murphy refinery at Superior, Wiscon-

sin could be achieved by looping the present Minneapolis-Superior line. In this supply scheme, the Minnesota pipeline would become idle. Its reversal would provide a means of moving crude to Clearbrook and from there to Wrenshall and Superior.

This pipeline could thus provide 350,000 B/D capacity for crude oil from Oklahoma to Minneapolis, Minnesota.

b. *Pipeline Connections*

An expanded Williams pipeline, as proposed, could receive crude oil from existing Gulf Coast pipelines that connect to the proposed Seadock deepwater terminal near Freeport, Texas. It could also receive oil from pipelines which would connect to the proposed Sohio Pipeline from Long Beach, California, to Midland in west Texas.

c. *Refinery Capacity*

This pipeline could be directly connected to refineries in Minnesota and Wisconsin which have the capacity to absorb approximately 200,000 B/D of North Slope-type crude oil. Refineries in these areas account for around 60 percent of capacity in the Northern Tier States that is most immediately affected by the reduction in Canadian crude oil exports (i.e., classified as Priority 1 under the Canadian Crude Oil Allocation Program).

d. *Allocation of Benefits of Alaskan Crude Oil*

Direct benefits of an expanded Williams Pipeline would accrue to refiners in Minnesota and Wisconsin. Indirect benefits would be increased availability of products to eastern North Dakota and the upper-Michigan Peninsula.

e. *Permitting Process*

At the present time, permitting is anticipated to present no problems, since existing Williams Pipeline rights-of-way will be utilized. Permitting for the initial phase of the expansion is nearly complete.

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VI. *Conclusions and Recommendations*

A. Conclusions Concerning the Equitable Sharing of the Benefits of North Slope Crude Oil, Directly or Indirectly, By All Regions of the Country

The most logical market for North Slope crude oil in the United States is the West Coast market, and it is likely that if refinery capacity for Alaskan type crude were sufficient on the West Coast to absorb the North Slope production, none of the proposed projects for moving Alaskan crude oil to the central United States would have been proposed. As a result of the projected surplus of crude oil on the West Coast and demand in other parts of the country, there are several proposals to construct permanent transportation systems from west to east, and it is through one or more of these systems that the purposes of Section 410 can be satisfied. It is readily apparent that the three northern pipeline projects proposed to move oil directly into the Northern Tier area are designed to serve essentially the same market areas, and, therefore, the construction of only one of those projects may be feasible. None of these projects would compete directly with the Sohio proposal in other than the Chicago market, although other portions of the upper Midwest and the Northern Tier could conceivably be served also by the Sohio project via a tie-in with the Williams system.

The Sohio project, combined with one of the projects designed to serve the Northern Tier, would provide the most direct means of achieving equitable distribution of Alaskan crude oil to those areas of the country which can economically use it. However, any project which provides a means of delivering Alaskan oil to the major refining and distribution centers east of the Rocky Mountains would indirectly benefit all areas of the country. Because the distribution systems for crude oil and petroleum products in the eastern United States are an integrated network, delivery of Alaskan crude oil to Chicago, the Mid-Continent area, or the Gulf Coast could result in

a reduction of imports, and would reduce the vulnerability of the eastern United States to embargos.

B. Specific Conclusions with Respect to the Sharing of the Benefits of Alaskan Crude Oil by the Northern Tier States

As discussed above, the Northern Tier States could directly benefit from any of the three northern proposals designed to connect with the Interprovincial and Lakehead Pipeline systems. While none of the proposals directly serves all refiners in all of the Northern Tier States, each could, with the construction of relatively short pipeline connections in addition to the major route, serve all portions of the Northern Tier. Regardless of whether such additional facilities are constructed, however, each of the three pipeline proposals provides a direct route for Alaskan oil to most of the Northern Tier.

The Sohio project could provide, via interconnecting pipelines, a link, albeit less direct, to the eastern half of the Northern Tier States. There are also potential indirect benefits, in the form of product shipments, to portions of the Northern Tier, from Alaskan crude oil which might be delivered to Midland, Texas. Alaskan crude oil delivered via the Sohio project to either Midland or the Gulf Coast could indirectly benefit the Northern Tier States east of Minnesota during an embargo, by replacing imports that would otherwise be diverted from the Gulf Coast. Thus, imported oil now shipped to Chicago via the Capline route could be replaced by Alaskan crude oil.

Finally, although each of the systems is capable of delivering Alaskan oil to some or all of the Northern Tier States, it is not presently clear to what extent Alaskan oil would be delivered to parts of this market, even if a pipeline route were provided. Alaskan crude oil delivered via any of these routes would have to be competitive with indigenous crude oil in parts of the Northern Tier, or with oil brought from other areas.

C. Impact of Delivery Systems on Reducing the Dependency of New England and the Middle Atlantic States on Imports

None of the proposed delivery systems serve New England or the Middle Atlantic States directly, and it would not appear to be economic to ship Alaskan crude oil by tanker directly to refineries on the East Coast. Thus, none of the proposals provides a direct benefit to these areas. However, Gulf Coast refineries supply a large percentage of the petroleum products consumed in New England and the Middle Atlantic States. To the extent that the Gulf Coast refiners were able to receive Alaskan crude oil by tanker or via pipeline from the West Coast at a price which would be competitive with imported crude oil, the New England and Middle Atlantic States would benefit by receipt of products refined from Alaskan crude. More significantly, in the event of an embargo, the existence of these transportation systems would provide a means by which Alaskan crude oil could continue to be delivered to the Gulf Coast to compensate for reduced imports, or to the Chicago area to replace Permian Basin (west Texas) crude oil which could then be moved in greater quantities to the Gulf Coast refineries which serve the Northeast with petroleum products. Thus, the existence of any west-to-east transportation system would operate to assure the equitable allocation of petroleum products to the Middle Atlantic and New England areas.

D. Conclusions Concerning Specific Provisions of Law Relating to Permits Required from Any Federal Officer or Agency, Which Would Tend to Inhibit Expeditious Construction of a Delivery System

1. *Permits Required*

Although numerous Federal permits are required for the construction of all of the projects except Kitimat (which requires permission from Canadian authorities),

most of these permits should not seriously inhibit construction if they are expeditiously applied for by project proponents.

However, because of the nature of these proposals, all of which require construction or expansion of marine terminal facilities and extensive construction and/or modification of pipelines, there are two Federal processes which necessarily require a substantial period of time to complete:

a. *Analysis and Consideration of Environmental Consequences*

The preparation of an Environmental Impact Statement (EIS) can be a lengthy process. Because of the length of pipeline routes and the potential for environmental impacts along the entire route, and because of public concern with respect to oil spills, the environmental review of pipeline and terminal proposals must be an extensive one.

Of the projects which may require an EIS, only Sohio and Northern Tier have applied for the Federal permits resulting in an environmental review leading to the preparation of an EIS. The Sohio EIS process is expected to be completed by June 1977.

The proponents of the Trans-Mountain Reversal project have not yet applied for any Federal permits. With respect to the Northern Tier project, it is the intention of the Department of the Interior to expedite the EIS preparation to the extent practicable when such permits are in fact applied for. Nevertheless, DOI estimates that the process will require at least one and a half years to complete.

Proponents of the Trans-Mountain Reversal do not consider the one Federal permit which they say is necessary (a permit from the Corps of Engineers to add a berth to ARCO's present Cherry Point terminal) to be a major Federal action which could have a significant

impact on the environment, and therefore argue that an EIS is not required. In any event, such permit has not yet been applied for, so the question of whether an EIS will be required has not yet been formally presented, much less resolved.

b. *Permits to Construct and Operate New Sources of Air Emissions and Wastewater Discharge*

All three of the proposed U.S. projects for west to east pipelines are presently involved in controversies concerning the operation of new or expanded marine terminals.

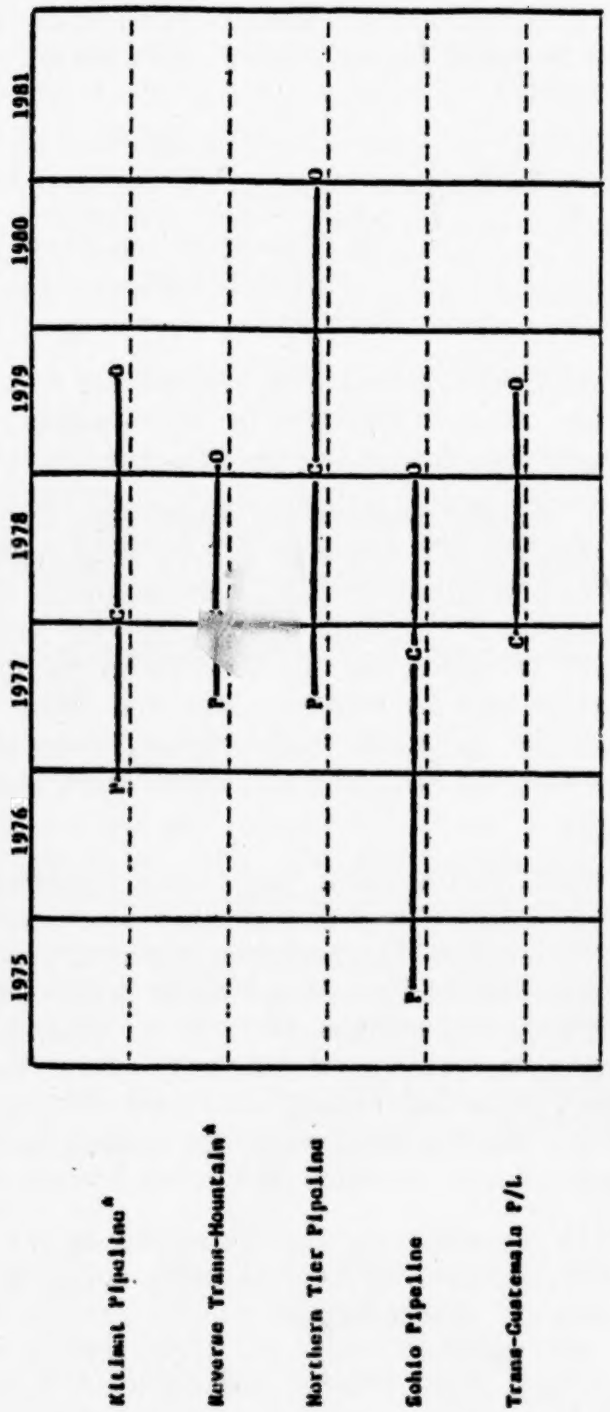
The two proposed projects in Washington State must be certificated by the State as EPA's delegate for Air Emission and Wastewater Discharge permits. Substantial environmental questions concerning the location of the proposed terminals are expected to be raised at the hearing which will be held on these and other permits required by the State. It would appear, therefore, that permitting may be delayed until these issues can be resolved.

With respect to the Sohio application, it appears that there may be substantial delays in final action concerning the air emissions at the proposed terminal facility at Long Beach. Most of that delay will be in the State permitting process, rather than with EPA, which still has new source emissions review authority under the Clean Air Act in California. In addition, final FPC action on the El Paso abandonment may not take place before December 1977.

Table XIV provides approval timetables on the various projects, as estimated by their sponsors, along with estimated construction schedules.

Table XIV

Earliest Estimated Approval and Construction Time



P Earliest application for Federal environmental study or major Federal permit.
C Earliest start of construction.
O Earliest start of operation.
* Canadian Government action.
Source: Sponsors' reports as modified by current permit approval status.

2. *Expediting Procedures Taken to Date*

In response to the mandate contained in Section 18 of the ANGTA, certain actions have been taken by the Federal Government to expedite permitting actions on the various projects, as follows:

a. In view of the fact that numerous Federal and State agencies are involved in the permitting process for the projects, on March 1, 1977, a Federal Project Coordinator was appointed by the Administrator of the Federal Energy Administration to coordinate the activities of all the various governmental agencies and private parties that have an interest or responsibility in the distribution of Alaskan oil and to assure that each agency or party is aware of the scope of its responsibility and is moving ahead in a timely manner to fulfill it. All Federal agencies, the private parties and the State officials involved have agreed to cooperate fully with the Project Coordinator.

b. Although no formal application has yet been filed, the Department of the Interior, which will have lead responsibility for the preparation of an EIS with respect to the Northern Tier project, has begun discussion of the form of the submission of environmental data with the project's proponents, in order to assure that the submission is complete and can be reviewed expeditiously when it is filed.

c. The Maritime Administration is expediting the publication of regulations concerning the transfer of CDS and ODS tankers to the domestic trade, and anticipates that final regulations can be in effect by the end of May.

d. The staff of the Federal Power Commission, in an effort to expedite the proceedings with respect to the abandonment of the El Paso Natural Gas Pipeline, for the Sohio Project, has filed a motion with the Commission to eliminate the requirement for an initial decision by the

Administrative Law Judge in the case. If this motion is approved, it could result in a decision by the Commission 2 to 5 months sooner than would normally be expected, and a final decision could occur by the late summer of 1977. The motion is generally supported by most of the parties in the proceeding, but elimination of the initial decision is unusual and may be challenged. The Commission has been urged by the Administration that, if it cannot grant the motion to eliminate the initial decision, it will employ other means to expedite the final decision to the maximum extent practicable.

E. Conclusions and Recommendations With Respect to Whether Special Expediting Procedures Are Necessary to Insure the Equitable Allocation of North Slope Crude Oil to the Northern Tier States, to Carry Out the Provisions of Section 410 of P.L. 93-153.

While it is apparent that the permitting process for each of the three proposed delivery systems will affect construction, there are several reasons for concluding that special expediting procedures, beyond those that will be taken under the mandate to Federal agencies contained in Section 18 of the ANGTA, are not appropriate at this time.

1. *There Are Significant Environmental Questions Involved in Each of the Projects Which Have Not Yet Been Sufficiently Defined and Analyzed*

When the Congress passed the Trans-Alaska Pipeline Authorization Act in 1973, it did so only after the environmental questions which were raised concerning the construction of the pipeline had been thoroughly studied. The legislation did not short-cut the EIS preparation process, but instead limited legal challenges to that process after it was completed. In passing the Act, the Congress effectively provided for appropriate environmental

safeguards, and was able to do so as a result of the environmental review that had already taken place.

Similarly, the Alaska Natural Gas Transportation Act did not foreclose full environmental review of each of the proposed Alaska gas pipeline routes. The Act specifically contemplates that an EIS will be done in the usual way for each project, and only after completion of such EIS will judicial review be limited. No environmental review under NEPA has been begun, much less completed, on the question of potential oil pollution in Puget Sound and other environmental questions which affect the Northern Tier and Trans-Mountain Reversal proposals. With respect to the question of water and air quality in the Los Angeles Basin, as well as other environmental issues, which affect the Sohio proposal, a final EIS has not been issued. Environmental aspects of each of these projects are also being scrutinized closely by State agencies which have permitting authorizations.

Environmental concerns are matters of grave importance to the citizens of the States and localities involved. As long as useful efforts to resolve them are taking place, those efforts should be allowed to continue pursuant to the procedures established in the National Environmental Policy Act of 1969.

2. *The Federal Environmental Review and Permitting Process Will Not Likely Extend Significantly Beyond the Review Period That Will Be Required By the Respective States That Will Be Transitted Under Each Proposal*

Under existing law, most of the States that will be crossed by each of the proposed pipelines, and particularly the States of Washington and California, which

would serve as marine terminal sites, have their own environmental review and siting responsibilities that are not preempted by Federal law. For example, as noted above, the Washington State Energy Facility Site Evaluation Council must hold public hearings and otherwise review the environmental and other impacts of the Trans-Mountain Reversal and Northern Tier proposals before they can be constructed. The State review process for each project could well take as long as and proceed simultaneously with the Federal Government's preparation of an EIS. In California, the completion of the Federal EIS has proceeded simultaneously with the preparation of an environmental impact report required under the California Environmental Policy Act. Similarly, the EPA's review of new source emissions from the Sohio marine terminal is proceeding simultaneously with and will probably not take longer than a similar review by California's Air Resources Board and the Southern California Air Quality Management District. While the FPC's abandonment proceeding may require another 8 months, the California Public Utilities Commission's abandonment proceedings for the intrastate portion of the gas line Sohio proposes to use will take about the same length of time, assuming an application for such abandonment is filed in the near future.

Thus, unless legislation to expedite the Federal permitting process also preempted State regulatory authority over the projects in question, little if any time would be gained by such legislation. In view of the interests the various States have in these projects and the potential adverse effects these projects may have on the local citizens unless mitigating measures are imposed, it is not recommended that Federal legislation preempt the existing authority of the States to make vital decisions concerning their own environmental quality.

3. *For Most of the States in the Northern Tier, There Exist Reasonable Means of Assuring an Adequate Supply of Petroleum Products While Long-Term Delivery Systems for North Slope Crude Oil Are Being Considered*

The FEA's preliminary analysis of crude oil and petroleum product supply for the Northern Tier States through 1980 indicated that even without significant actions being taken by the Federal Government, there would be no shortfalls of petroleum products during that period in most of the Northern Tier States. A potential reduction in the supply of light crude oil to refineries in Montana could result in a product shortfall in Montana and eastern Washington. Without extensive modifications, Montana refineries cannot utilize any additional volumes of heavy crude oil over the amount which is and will be available from local U.S. sources.

To the extent serious shortages might develop in some parts of the Northern Tier, there are several means of alleviating the problem that are being actively pursued, including the possibilities for increased exchanges of crude oil other than Alaskan with Canadian refiners, studies of the prospects for making increased volumes of indigenous local crude oil available to Northern Tier refineries, and modifications to the Canadian Crude Oil Allocation Program to increase its responsiveness to spot or seasonal shortfalls. In addition, unit train deliveries of crude oil to refineries in Montana and other parts of the Northern Tier are being considered by some affected refiners.

There is no intention here to suggest that the problems faced by refiners in these States are not difficult to solve, or that solutions are readily at hand. Rather, it is suggested that interim means of solving the short-term supply problems of some Northern Tier refiners have not

been fully explored and that it is too soon to determine whether diligent efforts on the part of those refiners, as well as FEA, will not produce solutions to these problems.

The supply figures given in this report are necessarily inexact because they are rapidly being overcome by events. Much more will be known about the Northern Tier supply problem in May 1977, when the Canadian government is expected to announce the volumes of exports it will make available to U.S. refiners in 1978. When those figures are announced, the FEA will promptly assess their impact on the Northern Tier supply situation and will report to the Congress immediately on its findings and the extent to which they affect the conclusions reached in this report.

4. *The Existence of Reasonable Short-Term Alternatives For the Disposition of North Slope Crude Oil Allows Time for Public and Private Consideration of a Long-Term Delivery System*

Although it is eminently desirable to develop appropriate pipeline systems for the delivery of crude oil from PAD V to the refining centers east of the Rocky Mountains, there are short-term methods for disposing of North Slope crude oil which will provide substantial benefits to the United States while the private and public consideration of long-term systems proceeds. It is only through this combination of private and public action that systems can be developed that will provide the most equitable and economic means of distributing North Slope crude oil in the United States. The private sector must be convinced of the economic advantage of any one system over competing systems before that system can be financed and constructed.

The public sector, through the permitting process, can ensure that the system, when completed, is safe and en-

vironmentally sound. Section 410 of the Trans-Alaska Pipeline Authorization Act and Section 18 of the Alaska Natural Gas Transportation Act require the President to use his powers, to the maximum extent practicable, to assure that the benefits of Alaskan North Slope crude oil are equitably shared by all sections of the country, including the Northern Tier States, and to expedite the Federal permitting process to assure that this purpose is expeditiously carried out. However, it would be inappropriate to suggest that this goal must completely override the environmental safeguards written by the Congress into the Clean Air Act and the National Environmental Policy Act.

Therefore, it is recommended to the Congress that no special expediting procedures be established at this time (other than those already established under the mandate of Section 18 of the ANGTA) with respect to the Federal permitting process for North Slope crude oil delivery systems. If, at a later time, it appears appropriate to expedite procedures in a way that will not compromise the environmental review process, recommendations to that effect will be submitted to the Congress.

PRESIDENT'S APRIL 15, 1977 REPORT TO CONGRESS ON THE PRICING OF ALASKA NORTH SLOPE (ANS) CRUDE OIL

TABLE OF CONTENTS

[Page Numbers Omitted in Printing]

PRESIDENT'S APRIL 15, 1977 REPORT TO CONGRESS ON THE PRICING OF ALASKA NORTH SLOPE CRUDE OIL

CHAPTER I

EXECUTIVE SUMMARY

A. *Description of Legal Reporting Requirements*

Section 8(g)(1) of the Emergency Petroleum Allocation Act of 1973 (EPAA), as added by Section 401(a) of the Energy Policy and Conservation Act of 1975 (EPCA), provides that on April 15, 1977, the President is required to submit to the Congress a report as to whether the FEA's crude oil pricing regulations in effect on April 15, 1977, "will provide positive price incentives for the development of the domestic crude oil production [on the Alaska North Slope] without lessening needed incentives for sustaining or enhancing crude oil production in the remainder of the United States." In other words, the report is to assess whether, under current price regulations, Alaska North Slope (ANS) crude oil will have a wellhead price such that it provides positive incentives for production of such oil without affecting other domestic crude oil prices (due to the composite wellhead price requirement of Section 8 of the EPAA) in a manner that would result in less production of other domestic crude oil than would otherwise occur.

If the President's findings are that a price sufficient to provide the necessary incentives for ANS production is so high that when entered in the composite price computation it would affect regulated prices for non-ANS domestic crude oil production in a manner likely to result in less production of such oil than might otherwise occur, Section 8(g)(2) authorizes the President to submit to the Congress, either with the April 15 report or at anytime thereafter, an amendment to the existing

regulations which would exclude from the composite price calculation up to two million barrels per day of ANS crude oil production. Such a proposed amendment must include a provision specifying a ceiling price or prices for the excluded production, such that the average of the proposed ceiling price or prices for ANS production cannot exceed the highest actual weighted average first sale price permitted under FEA regulations for significant volumes of any other classification of domestic crude oil. Such amendment is subject to disapproval by either House of Congress within 15 days of its submission, pursuant to the procedures of Section 551 of EPCA.

If such an exemption and ceiling price amendment is disapproved by either House of Congress, another proposed exemption may be submitted within 30 days. Further such amendments may be submitted not earlier than 90 days after the submission of any previous amendment. If any exemption and ceiling price amendment becomes effective, further amendments to modify the ceiling price(s) applicable to ANS production may not be submitted until January 1, 1978, and thereafter at not more frequent intervals than every 90 days.

B. *Findings*

On the basis of the assumptions used in the analysis, the first sale price of ANS crude at the wellhead appears to be less than the maximum allowable composite price for a period extending through at least June 1978, even under the most favorable assumptions from the producer's viewpoint. After that date, under certain pricing and transportation scenarios, the wellhead price for ANS crude could well exceed the lawful composite and therefore reduce the existing incentives for other domestic production. Seven scenarios are explored. The first three preclude exchanges of ANS crude oil with foreign countries, while the latter four allow them. Under Scenario

I, ANS crude oil is given entitlements treatment such that it sells at a price competitive with that of uncontrolled oil on the West and Gulf Coasts. Scenario II treats ANS crude as competitive with upper tier oil on the two coasts, while Scenario III allows ANS crude upper tier treatment on the West Coast, but import tier treatment on the Gulf Coast. Scenarios IV and V give ANS oil sold domestically uncontrolled and upper tier oil entitlements treatment respectively, but allow exchanges with Japan of 400,000 barrels per day (B/D) of ANS crude oil shipped in U.S. flag vessels. Scenarios VI and VII treat the oil sold domestically as upper tier and uncontrolled oil respectively, but allow 400,000 B/D of exchanged oil to be shipped to Japan in foreign flag vessels.

Three rates of increase in the price of foreign imports are considered. These are based on hypothetical assumptions, for purposes of analysis, that the landed cost of foreign imports will increase at (1) the annual level of U.S. inflation, assumed to be 5.5 percent; (2) 7.5 percent; and (3) 10 percent.

The case which provides the highest level of wellhead receipts is the one which increases the cost of imports at 10 percent, allows the ANS crude to sell as imports, and allows exports in foreign flag vessels. Even under this case the wellhead first sale price remains below the legal composite through the first half of 1978.

It is important to note that where uncertainty exists, the assumption for purposes of this report generally has been to adopt the case resulting in the highest first sale price. Thus, it is assumed that all of the cost savings resulting from exchanges would accrue to the U.S. producers, even though it is possible that some of those savings would be shared with the exchange partner. Also, no weight has been given to the possibility that some ANS crude might be discounted on the West Coast in

those cases where exports are prohibited. If either of these factors occurred, the result would be to reduce the ANS first sale price further below the composite and to delay further the estimated date when the actual wellhead prices might exceed the legal composite.

Finally, the cases treating ANS crude as upper tier have required projections of upper tier prices through 1981. These projections are made on the assumption that the average upper tier price will increase at the same rate as the rate of inflation as measured by the GNP deflator, assumed to be 5.5% through 1981.

The principal assumptions are the following:

1. The analysis covers the period from July 1977 through September 1981, which encompasses the remainder of the period that crude oil price controls can be imposed under current law.

2. ANS production will reach 1.2 million barrels per day by December 1977 and remain at that level through September 1981.

3. ANS crude will be used on both the Gulf and West Coasts, unless exchanges are allowed. The West Coast will absorb all that it can, and the surplus will be shipped to the Gulf Coast. West Coast consumption is assumed to reach 800,000 B/D by July 1978, which is the maximum amount present refinery configurations will allow. If less is absorbed on the West Coast, the likely effect will be lower wellhead prices than indicated herein.

4. The Trans-Alaska Pipeline Tariff will initially be $5.10/bbl. and will remain at that level until the middle of 1980, when it will be reduced to $4.65.

5. Shipments to the Gulf Coast will transit the Panama Canal until an assumed West Coast/Gulf Coast pipeline system begins operation in July 1979.

6. ANS crude will replace imported crude, and be priced on a par with imports.

7. The landed cost of imported crudes will be increased every 6 months, causing ANS crude values to increase by a corresponding amount at the same time.

8. All foreign exchanges are with Japan.

9. All cost savings of foreign exchanges will accrue entirely to the U.S.

10. ANS crude will be priced at the refinery at the level of imports (adjusted for quality) or at the level of upper tier crudes through the actions of the crude entitlements program.

11. ANS crude will be sold on a refinery-delivered basis by the producers. This will result in a range of wellhead netback prices which will reflect the range of transportation costs from the wellhead. To the extent that market forces would cause prices to equalize at the wellhead, wellhead prices will be lower than indicated herein.

There is of course no assurance that all or any of these assumptions will remain valid. However, on the basis of current information the assumptions listed above are considered to be the most appropriate and reasonable assumptions of future conditions. To the extent that alternative reasonable assumptions could have been made, the ones selected for this analysis are those that would result in the highest wellhead prices.

CHAPTER II

CONSIDERATIONS INVOLVED IN PRICING ALASKAN NORTH SLOPE (ANS) CRUDE OIL

A. *Background*

The EPAA, as amended by the EPCA and the Energy Conservation and Production Act of 1976 (ECPA), gives the FEA certain flexibility to control domestic crude oil prices, provided that the national weighted average "first sale", or wellhead, price for domestic crude oil meets certain statutory requirements. First, the weighted average first sale price for domestic crude oil produced and sold in February 1976 was limited to $7.66 per barrel. Second, this weighted average or composite price was allowed to increase at the rate of inflation, as measured by the adjusted GNP deflator, plus an additional 3 percent a year as a production incentive, not to exceed a total of 10 percent per annum.

In August 1976, in the ECPA, Congress allowed the maximum annual increase to remain at 10 percent per annum regardless of the rate of inflation. On March 15, 1977, FEA, in Energy Action No. 11, proposed continuation of the production incentive (i.e., the difference between the rate of inflation and 10 percent) after that date, and that continuation became effective 15 days thereafter when the period of congressional review expired. ECPA exempted stripper well production from ceiling prices but required that it be included in the composite calculation at an imputed price equal to $11.63 plus an amount which represents subsequent changes in the actual composite of upper and lower tier oil prices after August 1976.

FEA initially implemented the provisions of EPCA regarding the composite price by imposing ceiling prices

on domestic crude oil production at two levels or tiers. Lower tier, or "old," oil (i.e., crude oil produced from a particular property in volumes not greater than during the same month of 1972 or old crude oil produced during an average month in 1975, at the option of the producer) was allowed to sell at the highest posted price in the field on May 15, 1973 plus $1.35 per barrel. Upper tier, or "new," oil was permitted to sell at prices equal to the highest posted price in the field on September 30, 1975 (which at that time was an uncontrolled market price), less $1.32.* Since it was assumed that lower tier oil production was approximately 60 percent of all domestic production, it was calculated that the weighted average of upper and lower tier ceiling prices would work out to the $7.66 maximum composite price allowed for domestic production in February 1976.

Since the composite was allowed to increase over time at the rate of not more than 10 percent per annum, FEA allowed the ceiling prices of both lower and upper tier oil to increase gradually to take advantage of the allowable increase in the composite. It turned out, however, that domestic lower tier production was over-estimated and declined at a faster rate than had been anticipated, thus requiring that monthly increases for upper and lower tier prices be postponed for several months, and in two cases upper tier prices were actually lowered. FEA's history of implementing the composite pricing requirements of the EPCA is detailed in its February 15, 1977

* Crude oils of course vary in quality and therefore sell in a free market at varying prices to reflect, among other things, quality differentials. By adding or subtracting a fixed amount to the market prices at which crude oil sold on a certain base date, FEA's ceiling price regulations reflect these quality differentials, since they are reflected in the market prices from which the ceiling prices are derived. Quality differentials have in some cases changed over time, particularly for heavy California crude. These quality differential changes have also been reflected in FEA price regulations through specific amendments.

and March 15, 1977 reports to Congress that accompanied Energy Action No. 11.

An important point to note about FEA's ceiling price rules and about the calculation of the composite price is that both are based on "first sale" prices, which are defined in the Conference Report on the EPCA as being actual or imputed wellhead prices, exclusive of transportation costs. This is of considerable significance in regard to ANS crude prices, since, as will be discussed in detail below, transportation costs associated with bringing ANS production to refining markets will be considerably higher than those associated with any other domestic or foreign supply of crude oil.

B. *The April 15 Report on Alaskan North Slope (ANS) Production.*

Section 8(g)(1) of the EPAA requires the submission of a report to Congress on April 15, 1977, on whether the FEA price and allocation regulations "will provide positive price incentives for the development of" ANS production "without lessening needed incentives for sustaining or enhancing crude oil production in the remainder of the United States". The effect of this provision is that the President must advise Congress on April 15, 1977 of his judgment as to whether ANS oil wellhead prices will be above or below the national legal composite price and therefore would have the effect of increasing or decreasing the actual composite. The apparent concern on the part of Congress reflected in this section is that North Slope wellhead prices would be above the composite, thereby requiring offsetting adjustments in the prices of other domestic production and thus reducing the incentives for such production.

It is for this reason that Section 8(g)(2) of the EPCA gives the President the discretion to propose a regulation excluding wellhead prices of up to 2 million barrels of

ANS crude per day from the calculation of the composite if he finds that their effect on the composite would be to reduce incentives for other domestic production. If he elects to exclude ANS crude from the composite calculation, he must establish a ceiling price or prices for such ANS crude such that the average of such ceiling prices does not exceed the highest average first sale price permitted under FEA regulations for any significant volumes of any other classification of domestic crude oil. These provisions would become effective only if they have not been disapproved by either House of Congress within 15 continuous days of congressional session after they have been proposed by the President.

C. *Factors Relating to the Effect of ANS Crude on the Domestic Price.*

The effect that ANS crude will have on the composite price for domestic crude depends on (1) the prospective levels of first sale prices for ANS crude during the remaining statutory period of price controls, and (2) the prospective levels that first sale prices for non-ANS crude oil production would reach during the same period if ANS production were not included in the calculation of the composite. If, on the one hand, ANS crude should receive a first sale (wellhead) price which is less than the maximum legal composite price in any month, the inclusion of ANS crude in the calculation of the actual composite price would result in a lowering of the actual composite price. While there is no requirement that it be done, this would give the President the flexibility to adjust ceiling prices on non-ANS production so as to increase incentives for that production equal to the difference between the actual ANS first sale price and the legal composite that would otherwise occur in the same month, times the volume of ANS crude produced and sold during that month.

Conversely, if the actual first sale price of ANS crude exceeds the maximum legal composite price in a month, then the actual composite would be increased. In that event, unless ANS production were excluded from the calculation of the composite, ceiling prices on non-ANS production would have to be reduced such that total revenues on such production would be reduced by an amount equal to the amount the ANS crude wellhead price exceeded the maximum legal composite price times the volume of ANS crude produced and sold during that month.

Given this operation of the composite price mechanism, and if the ANS crude is not exempted from the composite, the actual first sale prices for ANS production can have a significant effect on the levels and availability of all other controlled domestic production.

The addition of the large volume of ANS crude to the U.S. crude supply could also cause changes in the prices of other domestic crudes, particularly those produced and used in Petroleum Administration for Defense (PAD) District V, which encompasses the West Coast, Alaska and Hawaii. The Trans-Alaskan Pipeline Act requires that ANS crude be used only in the United States, unless an exception is found by the President to be in the national interest and is not disapproved by the Congress. The ANS volume will be greater than the quantity now produced in PAD-V, and about equal to the quantity imported into that region, as will be discussed in Chapter V. In the absence of regulations, the surplus supply created by ANS crude would tend to force prices of ANS and all other PAD-V crudes to lower levels. Stability would be reached when other markets absorb the PAD-V surplus, and supply and demand of the ANS crude is balanced with the supply and demand for the other domestic crudes and the imports. This balance will most likely be realized at prices below current levels. Lower market prices in California might conceivably cause some existing non-Alaska West Coast production to be shut-in.

D. *Factors Affecting the First Sale Price of North Slope Alaskan Crude Oil.*

As noted above, the statutory composite price limitations apply to the "first sale" of domestic crude oil. The first sale normally but not always occurs at or near the wellhead. The Conference Report on the EPCA indicates Congress' determination that in order to provide equivalent treatment to all production, the first sale for purposes of the composite calculation is one which either occurs or is imputed to occur at or near the wellhead and one which therefore excludes cost of transportation of crude oil beyond the lease or unit from which it was produced. This legislative history thus makes it clear that the "first sale" price of ANS production, for purposes of determining its effect on the composite, is to be determined prior to its entry into the Trans-Alaskan Pipeline, even though no actual sale may occur until the oil reaches a refinery several thousand miles distant.

As will be shown in detail below, even if ANS production is allowed to be priced competitively with imports, the imputed first sale or wellhead price of ANS crude production is, at least initially, likely to be substantially below the upper tier price level, principally because of the high cost of transportation to West Coast and mid-continent markets. Some of the other factors that will affect the wellhead price of ANS crude oil are: (1) the delivered costs at various refineries of alternative imported crudes likely to compete with ANS crude; (2) quality differences between ANS crude oil and the crudes likely to be displaced by it; (3) differences in refinery location and technological configuration; and (4) the entitlements treatment that determines refinery crude oil acquisition costs. The effect of each of these factors will be discussed in subsequent chapters.

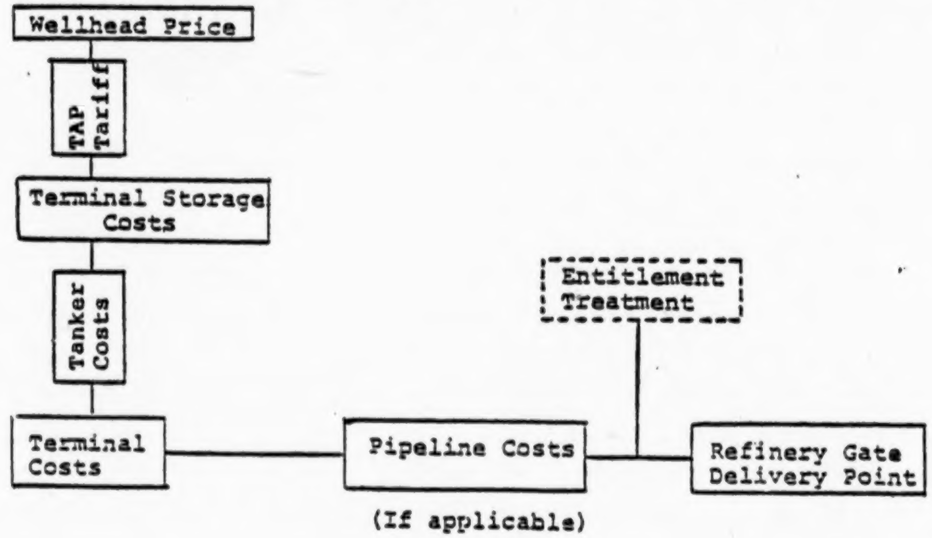
The first sale price of ANS crude will be established in the market place within the constraints imposed by FEA. FEA will have to assign the ANS crude to one or more ceiling price tiers. These could be one of the three existing tiers, (uncontrolled, upper and lower) or even a fourth new tier. A similar assignment to the same or another price tier will also have to be made for purposes of establishing ANS crude's entitlement value. This fixes the value level at which the ANS crude will be bought. Each refiner will then assign a quality differential to the ANS crude, to set the cost that that particular refiner will be willing to incur for ANS crude given his individual capability to refine it. The negotiations of sellers and buyers will then set the market price.

The wellhead price is the market price less the costs of transportation from the wellhead to the market. In this analysis, the domestic market points for ANS crude or the crude for which it is exchanged are assumed to be the West Coast and Gulf Coast ports, and the foreign market point under the exchange options is Japan. Both ocean and Trans-Alaska Pipeline (TAP) tariffs are subtracted from the market prices to obtain the wellhead prices. The netback to the wellhead will be different for each port. In this analysis, the netbacks from the three West Coast markets (Puget Sound, San Francisco and Los Angeles) are calculated and averaged to obtain a single netback figure for the West Coast.

The factors affecting North Slope wellhead prices are depicted graphically in Figure 1.

Figure 1.

FACTORS AFFECTING ALASKAN NORTH SLOPE CRUDE PRICING



CHAPTER III

REFINERY LOCATION AND TECHNOLOGICAL CONFIGURATION

A. *Refinery Location*

ANS crude is not likely to sell at the refinery gate at a delivered price (after taking into account relative entitlements benefits) that is uncompetitive with alternative sources of supply, which will be in most cases imported crude of similar quality. Since the most common substitute crude, a representative Persian Gulf light, sour crude (used herein as the reference crude),* has approximately equal transportation costs to the U.S. East, Gulf, and West Coasts (relatively small differences will be indicated below), it can be expected that ANS production will also sell at all these locations at approximately the same price.

* See discussion of crude quality differentials in Chapter IV.

Therefore, increases in transportation costs for ANS production delivered to various points will not likely cause delivered prices to increase, but instead will be "netted back" to the wellhead, with higher transportation costs resulting in lower wellhead prices. This makes the location of a refinery capable of utilizing ANS crude crucial in determining wellhead prices for ANS production. Transportation Costs [sic] to West Coast refiners will generally be lower than transportation to refiners in the interior, since in the latter case additional tanker or (when they become available) pipeline tariffs will have to be added to the cost associated with bringing ANS crude from Valdez to the West Coast. Thus, assuming all ANS crude is disposed of within the U.S., producer revenues will be less from sales to Gulf Coast and interior refiners than from sales to West Coast refiners.

Hence, assuming North Slope producers will be able to sell their crude to refineries at prices competitive with imports of Persian Gulf light at all locations, the incentive will be to sell ANS crude at those locations where transportation costs will be lowest and wellhead prices will consequently be higher.

B. *Nature of Refineries*

Several technical factors affect the price a refiner is willing to pay for a specific crude. Crude oils differ in the yields of various refined products which can be produced from them. Based on the values of the products which can be produced from a crude in its refineries and its processing costs, a refiner determines the price to be paid for a specific crude. This price may change over time, since the value of the various products produced by the refiner may change due to seasonal demand, new environmental restrictions or other factors. The values of some products, such as residual fuel oil, may tend to reflect the price of bituminous coal and the availability of natural gas, where these products are substitutable.

In addition to the products which can be produced, the value of a specific crude to an individual refiner is a function of that refiner's particular technological and crude oil supply configuration. For example, a refiner possessing extensive disulfurizing facilities and able to sell elemental sulfur may be willing to pay more for intermediate or high sulphur (sour) crudes, such as ANS crudes, than those refiners not having such technology, since he has considerable flexibility in using it. A refiner with no desulfurization capabilities can purchase sour crude only up to the volume that can be blended with low sulphur crudes for optimum profitability. Once that point is reached, incremental volumes of sour crude become less valuable to the refiner, in proportion to the decreased revenues realized from utilizing sour crude.

CHAPTER IV

QUALITY DIFFERENCES BETWEEN NORTH SLOPE ALASKA CRUDE OIL AND IMPORTED OIL

Analyses of West Coast refining capacity and refinery change capability indicate that in 1978, the first full year of production from the North Slope, the principal crude oils "backed out" of refinery utilization on the West Coast will be Persian Gulf light and intermediate crude oils. Some sweet high gravity Indonesian crude oil will also be displaced there because of greater utilization of onstream and new desulphurization capacity.

As noted above, the most representative foreign crude oil for pricing comparison to North Slope crude oil is considered to be Persian Gulf light crude. This conclusion is drawn from the fact that many refiners have identified it as the crude oil they would likely displace with ANS crude and also from a comparison of the

characteristics of the respective crude oils, as shown below:

	Prudhoe Bay (Sadlerochit)	Persian Gulf light (Imported)
Gravity, Degree API	27	34
Sulphur Content	0.97%	1.80%
50% True Boiling Point	685°F	600°F
Residuum (1000 F)°	21.7%	19.0%

Largely because of the somewhat higher volume of low-value residuum that would be produced from ANS crude oil, it will likely have a refinery gate value on the West Coast ranging from $0.10 to $0.40 per barrel (depending on refining configuration) below that of Persian Gulf light sour crude. For ease of computation, it will be assumed in this analysis that the average value for ANS crude is $0.25 per barrel less than Persian Gulf light crude on the West Coast.

For the Gulf Coast, analyses of imported crude oils indicate that the Persian Gulf light crude will again be the crude oil primarily backed out by ANS crude oil. The secondary crudes backed out on the Gulf Coast by ANS crude will be low-gravity, sour crudes, rather than Nigerian or other sweet crudes. As a result of higher utilization of desulphurization equipment on the Gulf Coast for which investment has already been made, ANS crude will likely have a relative value vis-a-vis Persian Gulf light that is somewhat higher than it will have on the West Coast. It is predicted that the quality differential there will be approximately $0.10 per barrel.

The quality of the reference crude, Persian Gulf light, is somewhat below that of the average crude imported into the United States. Moreover, since the shipping charges from the Persian Gulf to the United States Gulf Coast are slightly more than to the West Coast, the differential tends to be more pronounced on the West

Coast. These factors together account for the fact that Persian Gulf light crude is $0.50 less on the West Coast than the national average cost of imported crude, and is $0.35 less on the Gulf Coast. These figures, when added to the quality differentials between Persian Gulf light crude and ANS crudes, lead to the conclusion that ANS crude will be valued at $0.75 and $0.45 below the national average import cost on the West Coast and the Gulf Coast, respectively.

CHAPTER V

SUPPLY AND DEMAND PAD DISTRICT V

FEA has done extensive work to forecast supply and demand for crude oil in Petroleum Administration for Defense (PAD) District V, encompassing the western states of the U.S. Several tables summarizing its findings and estimates form the basis of the discussion in this chapter.

For purposes of this analysis it is instructive to compare the first quarter of 1977 with the same quarter of 1979. During the first quarter of 1977, forecasted crude imports into the West Coast remain close to the peak reached in the third and fourth quarters of 1976. By the corresponding quarter of 1979, there will have been one year to adjust to the flow of North Slope crude at this first plateau rate of 1200 MB/D.

The table below abstracts a few of the most important variables.

OVERALL CRUDE UTILIZATION *
DISTRICT V
(thousands of barrels/day)

Supply	1st Quarter 1977	1st Quarter 1979
Production		
North Slope	—	1200
Other PAD V	1126	1146
Total	1126	2346
Imports	1116	523
Total	2242	2869
Demand		
West Coast Refinery Receipts		
North Slope	—	800
Total	2242	2469
West Coast Products Consumption	2360	2670
West Coast Crude Excess		
(called "Interdistrict Shipments")	(25)	400

* Many items are omitted in abstracting the variables with the result that totals do not necessarily balance. For example, this table does not show a net *inflow* of crude into District V from other districts early in 1977. By 1979, the gross inflow from other districts will fall drastically and the outflow rises from 25,000 barrels/day to an estimated 400,000 barrels/day.

In effect, the current forecast says that the 800 MB/D of North Slope crude used in the West is accounted for by a combination of substitution for foreign crude and increased refinery runs over the current level. At the higher level of refinery runs, imports are less than they otherwise would be by over 600 MB/D, this much having been replaced by ANS crude.

Underlying this degree of substitution in place of crude imports is the assumption that ANS crude will be priced on the West Coast by the North Slope producers at a price that will back out all imports of a grade and quality for which ANS is a viable alternative. Since, as noted above, sale of ANS crude on the West Coast

will provide the highest return at the wellhead, all other things being equal, it is reasonable to assume that North Slope producers will price their oil so as to place as much of their production there as possible. Not all imports will be backed out, however, because many West Coast refineries must have access to oil that is lighter and/or sweeter than that which is available on the North Slope.

A breakout of the expected ANS crude distribution to the major refinery centers in PAD V is shown in the following table.

REFINERY RECEIPTS, PAD V, 1st QUARTER, 1979
(MB/D)

Puget Sound		
North Slope	125	
S. Alaska	15	
Imports	193	
Total		333
San Francisco Area		
North Slope	278	
California & S. Alaska	345	
Imports	102	
Total		725
Los Angeles Area		
North Slope	397	
California & S. Alaska	576	
Imports	168	
Total		1141
Other PAD V		
North Slope	—	
California & S. Alaska	210	
Imports	60	
Total		270
Total West Coast Refinery Receipts *		2469
Excess to West Coast		400
Total		2869

* Includes Nevada, Arizona, and Utah.

CHAPTER VI

IMPORTED CRUDE OIL PRICES

If ANS crude is allowed under FEA pricing and entitlements program rules to sell at the refinery gate at prices competitive with imports, changes in the price of imports over time will affect the delivered prices domestic refiners will be willing to pay for substitute ANS crude. If transportation costs remain relatively fixed, fluctuations in the delivered price for ANS crude will be reflected as well in the wellhead price, which in turn will change the impact ANS wellhead prices will have on the composite. Thus, changes in import prices could have a significant impact on incentives for production in the lower forty-eight states if ANS crude is included in the computation of the composite price.

The foreign import price for crude oil has ranged between $12.43 and $14.92 per barrel since November, 1974. In view of the fact that import prices are influenced principally by the decisions of the Organization of Petroleum Exporting Countries and U.S. tariffs, it is difficult to predict the future course of such prices. Hopefully, they will not experience in the future the large increases of recent years. However, for purposes of this report and in order to determine a range of possible fluctuation in ANS prices, it is assumed herein that, for the first half of 1977, prices for imports will have risen 7 percent over 1976 levels (to $14.45 per barrel, which generally reflects the weighted average of the OPEC price increases announced in December 1976) and that thereafter OPEC will raise prices on July 1 and January 1 each year at a rate equal to the U.S. inflation rate. This inflation rate was estimated to be 5.5 percent annually as was used in the 1977 National Energy Outlook. Higher rates of 7.5 and 10 percent are also

used in this analysis in order to provide a range. Thus, the range of import prices is hypothesized as follows.

AVERAGE IMPORTED CRUDE OIL PRICE *

	$ per Barrel		
	5.5%	7.5%	10%
1st Half 1977	$14.45	$14.45	$14.45
2nd Half 1977	14.84	14.99	15.17
1st Half 1978	15.28	15.55	15.93
2nd Half 1978	15.68	16.14	16.73
1st Half 1979	16.11	16.74	17.56
2nd Half 1979	16.55	17.37	18.44
1st Half 1980	17.00	18.02	19.36
2nd Half 1980	17.47	18.70	20.33
1st Half 1981	17.95	19.40	21.35
2nd Half 1981	18.44	20.13	22.42

* Including Import Fee.

CHAPTER VII

TRANSPORTATION COSTS

A. *Trans-Alaska Pipeline*

The Trans-Alaska Pipeline (TAP) is an undivided interest, joint-venture, common carrier, subject to the jurisdiction of the Interstate Commerce Commission. As an undivided interest line, each participant may file a tariff for its share of the total capacity of the line, or a common tariff may be filed by the group. In either event, it is generally expected that the tariff rates will be similar for all participants.

ICC regulations require the tariffs to be filed ten days prior to the date of first input of crude oil to the line. Formal regulatory jurisdiction over the line is considered by the Commission to start as of the date of tariff filings.

The level of initial tariffs will be established by the participants, subject to review by the ICC. Affected parties may challenge the tariffs during the ICC review process and the State of Alaska has already filed papers with the Commission indicating such an intent.

An ultimate finding by the ICC which modifies the filed tariffs may result in refunds to shippers for the prior period if the tariff is found to be higher than that permitted by ICC regulations.

The ICC established, in 1940, that a return on valuation of 8%, before payment of interest charges on long term debt, but after taxes, was reasonable and proper for crude oil pipelines. However, an additional constraint on tariffs was established in 1941 in the Consent Decree negotiated by the U.S. Department of Justice. This allows the annual distribution of up to 7% of the pipeline valuation to the shipper-owners of the pipeline. It has been the practice in the oil industry to establish rates on crude pipelines in accordance with the Consent Decree. These rates have not been challenged before the I.C.C. and have remained in effect. Since this has been the case, the Consent Decree methodology has been used in developing the rates used in this analysis. These are to be considered as reasonable estimates of the initial tariff proposals that will be submitted by the TAP owners to the ICC. The I.C.C. is, in fact, reconsidering its procedures in light of the William's Brothers case, but it may be several years before the Commission adopts any ratemaking procedure changes, which in any event cannot be predicted.

Reflecting the requirements of the Consent Decree and the actual ultimate construction cost of the line (now estimated at $9 billion), the estimated "fair value" and allowable return, the estimated level of operating costs, fixed charges, taxes, etc., and the projected thruput of the line, it is estimated that the Trans-Alaska Pipeline par-

ticipants will submit initial tariffs in the range of $4.75 to $6.15 per barrel and, most probably, approximating $5.10 per barrel. These tariffs are expected to cover the period from start of operations through June 1980. Using the same bases, a lower tariff of approximately $4.65 per barrel should be proposed for the next two year period.

Each tariff level is based on a different set of assumptions. The assumptions used in these tariff projections reflect the current best estimates and the practical po-

TABLE VII-1

TRANS ALASKA PIPELINE SYSTEM

ASSUMPTIONS FOR TARIFF COMPUTATIONS

	High Projected Tariff	Probable Projected Tariff	Low Projected Tariff
Projected Tariff to 4th Q. 1980 — $B	6.15	5.10/5.25	4.75
ICC Fair Value Rate Base:			
w/Inflation in P. L. Costs, 1975-80	8.0%/yr.	5.0%/yr.	5.0%/yr.
w/Average Life of Line	35.0 yrs.	35.0 yrs.	35.0 yrs.
Cum. Rate of Return on ICC Fair Value	7.0%	7.0%	7.0%
Deficiency/Loss Carry Forward	3 yrs.	3 yrs.	3 yrs.
Revenue Thruput to 12/31/80 — MBD	1,198,200	1,387,380	1,387,380
Construction Cost for 1,200 MBD Cap'y—$M	7,700	7,700	7,700
Interest During Construction — $M	1,300	1,300	1,300
Total Capital Cost for 1,200 MBD — $M	9,000	9,000	9,000
Disallowed Construction Costs — $M	—	—	100
Credits v. Sale of Wk. Equip. — $M	—	—	100
Net Capital Cost — $M	9,000	9,000	8,800
Average Debt to Total Capital — %	85.0%	85.0%	75.0%
Average Interest Rate on Debt — %	9.5%	9.5%	9.0%
Average Debt Retirement Period — Yrs.	20 yrs	20 yrs	15 yrs
Operating Costs — Manpower, Overhead, Fuel, etc. at 1,200 MBD — ¢/Bbl.	27.4¢/Bbl	27.4¢/Bbl	27.4¢/Bbl
Marginal Fuel Saving below 1,200 MBD	10.0¢/Bbl	10.0¢/Bbl	10.0¢/Bbl
Book Depreciation	35 yrs/SL	35 yrs/SL	35 yrs/SL
Amortization of Start-up and Disallowed Capital Costs or Acct'g. Treatment	Cur. Loss	Cur. Loss	10 yrs/SL
Tax Depreciation	18 yr/SYD	18 yr/SYD	18 yr/SYD
Investment Tax Credit	10.0%	10.0%	10.0%
State Ad Valorem Tax Rate v. Current Market Value of Pipeline	2.0%	2.0%	2.0%
State Corporate Income Tax Rate	9.4%	9.4%	9.4%
Federal Income Tax Rate	48.0%	48.0%	48.0%
Spill Fund Charge on First 2 Billion Bbls. Moved — ¢/Bbl.	5.0¢/Bbl	5.0¢/Bbl	5.0¢/Bbl
Removal Fund Charge V. 167 MM Annuity yielding 7% per year for 35 yrs.	40.0¢/Bbl	20.0¢/Bbl	20.0¢/Bbl

tential for variation of the different elements involved in the rate making process. Therefore, to the extent that actual thruput is greater or actual operating costs are less or profits are greater than presently estimated, these projected tariffs will remain in force a shorter period of time. The reverse is also true.

B. *U.S. Flag Tanker Availability*

The Merchant Marine Act of 1920, as amended, sometimes known as the Jones Act, reserved the marine trade between U.S. ports, known as domestic trade, to ships that are American built and documented and wholly-owned by American citizens (so-called "Jones Act" ships). The Merchant Marine Act of 1936 established a direct subsidy program for U.S. flag shipping, but ships receiving either a construction differential subsidy (CDS) or an operating differential subsidy (ODS) in order to make them competitive with foreign flag vessels are precluded from domestic trade. However, such U.S. flag ships in foreign trade may become eligible for the domestic trade for 6 months of each year by foregoing the ODS for the period involved and by repaying a prorated portion of the CDS.

The U.S. Maritime Administration (Marad), has prepared estimates of U.S. flag tanker requirements and availabilities for carrying Alaskan crude oil in a paper entitled "The U.S. Flag Tanker Fleet and Domestic Carriage Requirements", October 21, 1976.

Marad presented estimates for three future periods of the total deadweight capacity of U.S. flag tankers either eligible or that could be made eligible for trade between U.S. ports. Marad compiled estimates in a number of categories reflecting "the type of trade for which each vessel was felt to be suited in terms of physical or legal characteristics". It is emphasized that there is considerable flexibility in the deployment of shipping, how-

ever, and future market factors will substantially affect actual deployment. Estimates are shown in the following table.

TABLE VII-2

U.S.-Flag Tanker Fleet Supply *
(thousands of DWT)

Nominal Trade Category	1978.2	1980.1	1982.4
Domestic Trade Fleet:			
Other than Alaska	3,853.8	3,853.8	3,853.8
Alaska (incapable of Canal Transit)	1,838.1	2,818.1	2,968.1
Alaska (capable of Canal Transit-light)	1,057.2	1,146.9	1,146.9
Alaska (capable of Canal Transit-full)	—	—	—
Total	6,749.1	7,818.8	7,968.8
Foreign Trade Fleet (Non-CDS):			
Alaska-suited (incapable of Canal Transit)	521.7	521.7	521.7
Alaska-suited (capable of Canal Transit-light)	61.0	61.0	61.0
Alaska-suited (capable of Canal Transit-full)	1,227.4	1,227.4	1,227.4
Total	1,810.1	1,810.1	1,810.1
Foreign Trade Fleet (CDS) *:			
Alaska-suited (incapable of Canal Transit)	2,337.9	2,393.9	2,393.9
Alaska-suited (capable of Canal Transit-light)	982.2	982.2	982.2
Alaska-suited (capable of Canal Transit-full)	375.8	375.8	375.8
Total	3,695.9	3,751.9	3,751.9
Grand Total	12,255.1	13,380.8	13,530.8

* Three tankers (VLCC I, VLCC II, AND Zapata VLCC) have been excluded from consideration due to size. Each of these vessels will have a total dead-weight capacity of 390,000 DWT.

In addition, several tankers under charter to Military Sealift Command have been excluded because MSC presently expects these vessels to continue in their service.

Thus, the Marad analysis, which has generally been confirmed by Standard Oil of Ohio and the Exxon Corporation, the two major North Slope producers that would have to charter substantial number of tankers, reached the conclusions that, first, there will *not* be sufficient capacity in the Jones Act fleet alone to carry Alaskan crude oil in 1978 at rates of 700,000 barrels per day of North Slope oil to the West Coast; 500,000 barrels per day of North Slope crude to the U.S. Gulf Coast; and 150,000 barrels per day of oil from south Alaska to the West Coast, and, second, there *will* be sufficient capacity in the entire U.S. Flag Fleet, if available CDS and ODS tankers are converted to domestic trade. The tanker availability estimates of Marad and Sohio are summarized in the following table:

Table VII-3

U.S.-FLAG TANKER FLEET SUPPLY/DEMAND BALANCE, ALASKA OIL TRADE

(2nd Quarter, 1978; thousands of DWT)

US-Flag Supply	Marad	Sohio
Other than Alaska	3853.8	3736.3
Alaska-suited large tankers	6798.1	6277
Alaska-suited small tankers	1603.2	1472
	12255.1	11485.3
Less: Usage in other than Alaska Trade	3853.8	4250
	8401.3	7235.3
Less: Alaska Crude shipping Demand	4638.2	5020
Excess: Available for foreign trade	3763.1	2215.3

The significance of U.S. flag tanker availability to this study is that the supply of such tankers will have a direct bearing on tanker tariffs between Valdez and other U.S. ports. Without the conversion of subsidized vessels to domestic trade, it could be expected that the substantially increased demand for tankers caused by the Alaskan trade would cause tanker tariffs to increase substantially over current levels. With the increased supply of tankers resulting from conversion, however, tanker tariffs might not change significantly from existing levels. While it is yet too early to predict with precision the effect that increased Alaskan trade will have on domestic tanker tariffs, for purposes of this analysis it is assumed that tanker tariffs will not increase above existing levels. If they should increase, they would cause wellhead prices to be lower than the levels indicated in this analysis.

C. *Exchanges With Japan*

An alternative to selling ANS crude oil in the U.S. is to exchange it with a Japanese refiner in return for, say, Persian Gulf oil.

In general, an exchange may permit a reduction in total transport costs of the two parties to the exchange.

Or, by providing each party with a different crude than he would have without the exchange, it may provide the two parties together with a net increase in crude oil value. There will be a net change in crude oil value for the two parties together if the relative values of the two crude oils in the two different markets differ because of differences in processing costs, product slates, and product demands. Should an exchange permit a reduction in total transport costs, but at the same time involve a net reduction in crude oil values to the parties taken together, the exchange will still generate a net increase in total value if the savings in transport costs exceed the reduction in oil values.

The sections below discuss the component calculations involved in an exchange between an ANS crude oil owner and a Japanese refiner. In addition to components associated with transport costs and quality costs or benefits (crude oil values to the two refiners), calculations include a duty incurred on Persian Gulf crude landed in an exchange on the U.S. Gulf Coast.

As parties to an exchange, both the ANS crude owner and the Japanese refiner might be better off. Or, one party, say the ANS owner, might be made better off without the other party, the Japanese refiner, being made worse off. The extent to which each party gains by exchanging varies with the terms of the exchange. Regardless of the terms and the relative benefits to each party that result, the total net benefits are the same, given the transport costs, quality allowances, and applicable duties if any.

However, calculations in scenarios IV-VII in Chapter IX hypothesize that in an exchange total net savings to the two parties result in higher wellhead prices for the ANS crude. This allocates all the gain from the exchange to the ANS crude owner, none to the Japanese refiner. It should be noted, however, that it may be necessary, in

order to induce a foreign party into an exchange, that some of the net transportation savings be shared with it, thus reducing the benefits to the U.S. party. It should also be noted that not all of the U.S. cost savings from an exchange need accrue to the benefit of the ANS producers. It is possible, through adjustments in the entitlements program, to pass those savings on to refiner-purchasers and theoretically to consumers. In either event, wellhead prices would be lower than indicated in this analysis.

Finally, it should be emphasized that in an exchange involving domestic crude, the foreign crude received in exchange is ordinarily treated under the entitlements program exactly as the domestic crude would have been treated. Although transport costs, quality adjustments, and incurred duties may be different, there is assumed to be no difference in net entitlement benefit to domestic refiners who purchase the ANS crude if delivered to the U.S. Gulf Coast, or, alternatively, the Persian Gulf light when landed on the Gulf Coast in an exchange. The oil used in the U.S. is treated either as import tier or as upper tier for entitlement purposes, regardless of whether it is ANS crude or Persian Gulf light received under an exchange.

1. *Transportation Costs*

In the absence of an exchange, crude is shipped from Valdez to the U.S. Gulf Coast and Japan imports light crude from the Persian Gulf. For 1977, estimates of tanker costs are, respectively, $2.70 per barrel and $0.75 per barrel, the latter based on AFRA. This is a total of $3.45 incurred by both parties. The Valdez-U.S. Gulf tanker cost includes a $0.20 Panama Canal toll and a $0.20 lightering cost for passage through the Canal. In addition, for crude shipped from Valdez to the Gulf Coast there are two unloading losses of $0.07 per barrel for each unloading and an unloading fee of $0.04 per barrel at the destination. On the delivery from the Persian Gulf to Japan there is a $0.07 per barrel unloading loss. Total transport costs to both parties, the sum of tanker rates, unloading losses, and unloading fees, are $3.45 + $0.18 + $0.07 = $3.70.

With exchange, the estimated tanker cost for shipping crude in U.S. flag tankers from Valdez to Japan is $1.25 per barrel. (All transport cost estimates are subject to error and this estimate especially because it depends upon U.S. flag tanker deployments in the West Coast, Gulf Coast, and Japan trade simultaneously). The AFRA-based rate from the Persian Gulf to the U.S. Gulf, including a $0.02 per barrel transshipment charge in the Caribbean, is $1.35 per barrel. The total for the two parties is $2.60. Adding $0.18 per barrel unloading losses and unloading fee on the shipment landed at the Gulf Coast and $0.07 per barrel on the shipment landed in Japan, brings total transport costs up to $2.85.

Thus, the net reduction in transport costs for both parties in an exchange is estimated at $3.70 - 2.85 = $0.85 per barrel. (See Table VII-4 on page 46).

2. *Quality Adjustments*

In an exchange, a Japanese refiner accepts a crude oil, ANS, that is worth $0.20 per barrel less to him, in these calculations, than Persian Gulf light. At the same time the ANS crude owner lands Persian Gulf light on the U.S. Gulf that is $0.10 more valuable to him there than the ANS crude.

Thus, there is a net reduction in crude oil values to the two parties, taken together, of $0.10 per barrel.

3. *U.S. Duty*

In the current analysis, the foreign barrel entering the U.S. is assumed to incur the full $0.21 import fee. This becomes a factor that reduces the total gain from exchange.

4. *Gain From an Exchange*

In an exchange, total transport costs would be reduced by $0.85 per barrel. This gain is partially offset by a net reduction in crude value to the two refiners of $0.10 per barrel and a U.S. import charge of $0.21 per barrel.

The net total gain to the two parties is $0.85 — $0.10 — $0.21 = $0.54 per barrel. If a foreign tanker rate estimate of $0.45 per barrel is applicable for a Valdez to Japan delivery, the total gain in an exchange is increased by $0.80 to $1.34 per barrel.

5. *The Effective Exchange Rate: Allocating Gain Entirely to the ANS Owner*

The division of the net total gain varies with the effective terms of the actual exchanges the two parties settle upon.

In scenarios IV-VII, all the gain is enjoyed by the ANS owner, although a Japanese refiner is left no worse off. It is as if the ANS owner offers an exchange in which he takes delivery at the Persian Gulf, and offers each Japanese refiner a delivery in Japan of ANS crude. It would pay each Japanese refiner to offer a crude oil exchange rate up to the rate that would be equivalent to a landed cost per barrel to him not greater than what he can land Persian Gulf light for with his appropriate quality adjustment. If there is sufficient competition among Japanese refiners to yield this result, all gains accrue to the ANS owner.

In scenarios IV and V, the effect for the exchanged part of ANS crude is a $0.54 higher Valdez or wellhead net back price for the ANS crude in 1977 than realized by marketing on the Gulf Coast under the same entitlements treatments. In scenarios VI and VII, in which foreign flag tankers are used to Japan, the effect is a $1.34 higher wellhead price.

The computation under scenarios IV and V is as follows:

Without exchange

Costs of transportation to the Gulf Coast is $2.70 + $0.18 = $2.88.

With exchange

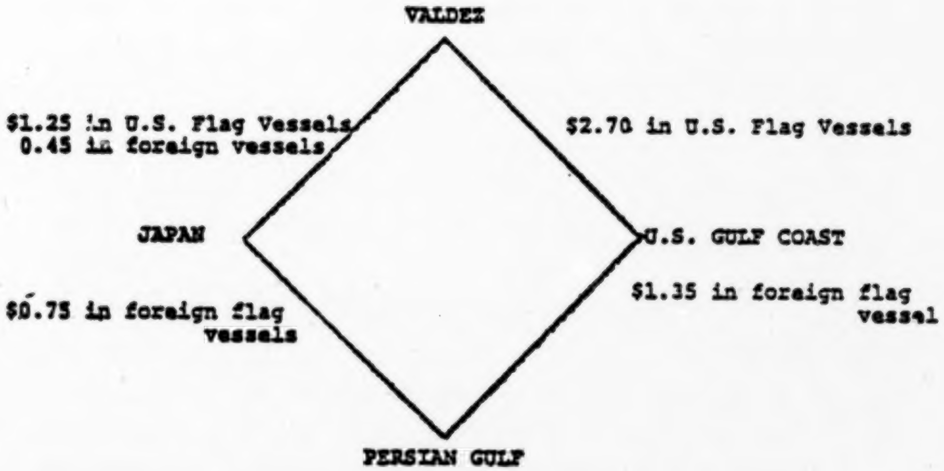
Transportation cost from the Persian Gulf to the U.S. Gulf Coast is $1.35 + $0.18 = $1.53 per barrel. Add $1.25 + $0.07 = $1.32 in cost from Valdez to Japan. In Japan, get an effective crude oil exchange rate from a Japanese refiner that leaves him no worse off. He settles on a rate such that the ANS owner's total effective costs are (1) reduced by $0.75 + $0.07 = $0.82 per barrel because of transport costs avoided by the Japanese refiner; and (2) increased by $0.20 per barrel because of a quality reduction *incurred* by the Japanese refiner. Finally the ANS owner pays $0.21 per barrel import charge at the U.S. Gulf. The algebraic sum or net cost to the ANS owner is:

$$\$1.53 + \$0.21 + \$1.32 - \$0.82 + \$0.20 = \$2.44.$$

The net gain to the ANS owner is $2.88 — $2.44 + $0.10 = $0.54 which is measured as an increase in his realized netback. Under scenarios VI and VII, the same calculation is made except that $0.45 is used as the Valdez to Japan transportation charge, in which case the net gain at the wellhead is $1.34.

TABLE VII-4

Potential Ocean Tanker Cost Savings of an Exchange with Japan (1978)



Combined tanker costs of delivering a barrel of crude to the U.S. Gulf coast and a barrel of crude to Japan.

1. Direct Shipment		$3.45
Valdez to U.S. Gulf	$2.70	
Persian Gulf to Japan	.75	
2. Exchange with Japan		
A. Using U.S. Flag vessels from Valdez to Japan		$2.60
Valdez to Japan	$1.25	
Persian Gulf to U.S. Gulf	1.35	
B. Using foreign flag vessels from Valdez to Japan		$1.80
Valdez to Japan	$0.45	
Persian Gulf to U.S. Gulf	1.35	

Tanker cost savings from the exchange

1. Using U.S. Flag vessels from Valdez to Japan		$0.85
Direct Shipment	$3.45	
Less exchange	- 2.60	
2. Using foreign flag vessels from Valdez to Japan		$1.65
Direct Shipment	$2.45	
Less Exchange	- 1.80	

CHAPTER VIII

ENTITLEMENT TREATMENT

Under FEA price reguations adopted to implement the statutory crude oil composite price regulations, domestic crude oil is classified as lower tier (about 50 percent of total production), upper tier (about 36 percent) and stripper well (about 14 percent).

Stripper well crude oil, which is production from properties which have declined to a level of 10 barrels per day per well or less for a 12 month period, is permitted by statute to be sold at market price levels in order to provide incentives to prolong production of marginal properties.

Upper tier crude oil generally includes production from properties which began production after 1972, plus incremental production from older properties which exceeds a certain base production level. The upper tier price (which averaged $11.64 per barrel at the wellhead at the end of 1976, or roughly $2.00 below the delivered cost of imports) is generally designed to stimulate additional production from older properties and to encourage further exploration and development of new domestic crude oil resources.

The lower tier price, which averaged about $5.17 at the wellhead nationally at the end of 1976, applies to all production which is not exempt, or which does not qualify as upper tier crude oil.*

Given the range of domestic crude oil prices, some crude oil cost equalization mechanism was determined by FEA to be essential. Otherwise, wide price disparities for controlled products would exist for end users, and

* In December 1976, the most recent month for which actual (preliminary) price data is currently available, the actual composite price at the wellhead for upper and lower tier domestic crude oil was $8.40.

refiners having disproportionately greater access to lower price oil would either reap substantial windfall profits or be in a position to drive their higher cost competitors out of business. In practice each refiner generally has a different "mix" of lower tier, upper tier, and exempt or imported crude oil, due to historical pricing patterns and the location of individual refiners.

The FEA domestic crude oil allocation (entitlements) program is the program FEA implemented in December 1974 to help equalize crude oil costs among U.S. refiners. Essentially, the entitlements program (subject to certain qualifications not here relevant), by requiring transfers of cash through purchases and sales of entitlements among refiners, achieves the same result as if FEA had directly allocated to each refiner a "mix" of lower tier, upper tier, exempt, and imported crude oil which reflected the national supply ratios for each of these price categories of crude oil.

Stated another way, the entitlements program means that lower tier crude oil, upper tier crude oil, and exempt and imported crude oil all have relatively equivalent effective acquisition costs to the refiner (subject to certain qualifications and assuming insubstantial variations in quality). Also, because the entitlement transfers are computed nationally on the basis of total volumes of lower tier, upper tier, and uncontrolled oil, and on the basis of the national average prices of these broad classifications, the net payment by or to a given refiner depends not on the price or quality of an individual crude, but rather on these national averages.

The mechanism for equalizing costs operates essentially as follows: Each refiner is required to report his costs and volumes of crude oil purchased each month, broken down by lower and upper tier domestic oil and imports.*

* For purposes of the entitlements program, uncontrolled domestic stripper well oil is treated in the same category as imported oil.

National average prices and supply ratios for each category are then established, and each refiner is assigned "entitlements" to refine a mix of crude oil that reflects the national ratio. An entitlements value is also assigned to each tier that reflects the average cost differentials among the various tiers for that month. Refiners that purchased and ran a disproportionate supply of relatively cheap lower tier oil will have an entitlements deficit that they must make up by purchasing excess entitlements from those refiners that purchased and ran a disproportionate amount of upper tier or imported oil. For each month, the value of entitlements that must be purchased will exactly equal the amount available for sale on a nationwide basis.

It is important to note that, because the purpose of the entitlements program is to equalize refiners' costs rather than producers' revenues, entitlements values are based on average laid in costs to refiners, inclusive of transportation costs. This distinction from FEA's crude oil ceiling price rules, which apply to wellhead prices exclusive of transportation, has considerable significance for the pricing of ANS production, as will be seen below.

As a consequence of the method of entitlement computation, and because regulated domestic crude oil prices are ceilings, rather than mandated levels, the incentive exists for refiners to shop competitively for crudes in order to minimize their total feedstock acquisition costs, comprised of delivered crude costs plus or minus the entitlements costs or benefits. Thus, a practical effect of the entitlement cost equalization program is that the program created to equalize costs becomes also a vehicle for influencing the delivered prices that producers will receive for their crude at the refinery gate. For example, refiners contemplating the purchase of a new supply of crude will determine the price that they are willing to pay for that crude based on their average acquisition

costs of existing crudes, the comparative quality of the new crude, the difficulty of processing and the value of the petroleum products which can be produced from it, and the entitlement benefits the refiner can expect to receive for it. In the case of ANS crude, therefore, the delivered price a given refiner will be willing to pay ANS crude producers for their oil will depend very heavily on whether FEA decides to treat ANS crude for entitlement purposes as upper tier or as import/uncontrolled tier oil.

To take a specific example, suppose that a refiner regards ANS crude to have the same processing difficulty and to yield the same value of products as a certain alternate imported crude. If the ANS crude were treated as import tier crude for entitlement purposes, then the refiner would get the same entitlement value for an incremental barrel of ANS crude as for imports, and would therefore be willing to pay a delivered price for ANS crude roughly equivalent to the landed cost of the import. If, however, ANS crude were treated as upper tier oil for entitlements purposes and the refiner therefore received the much smaller entitlement value, he would only be willing to pay a delivered price for ANS crude that would be lower than the price of the import by the amount of the difference in entitlement values for import and upper tier oils.

The monies transferred among refiners are considered to be costs of obtaining crude, which, under FEA regulations can be passed through into the prices of finished products. The regulations require refiners that sell entitlements (i.e., receive money) to reduce their increased costs by an amount equal to the revenue received. The refiner that incurs an additional cost in obtaining entitlements may include this in the increased costs of product. These cost-pass-through regulations, acting in concert with market forces, cause each refiner to adjust product

prices so as to transfer the value of the entitlements transaction to the end user. All refiners are put on a competitive cost basis for their products and marketers and consumers are able to obtain their supplies at much more competitive prices than would exist without the entitlements program.

Table VIII gives an example of how the refiners' costs are adjusted. The crude oil data used are the volumes and prices projected by FEA for May, 1977.

TABLE VIII

ENTITLEMENT PROGRAM EFFECTS

	CRUDE OIL TIER			
	Imported *	Exempt Domestic	Upper Tier	Lower Tier
Refiner Cost	$ 14.45	$ 14.45	$ 11.38	$ 5.57
Run Credit	—3.07	—3.07	—3.07	—3.07
Entitlement Purchase	—	—	+2.86	+8.67
Net Cost	$ 11.38	$ 11.38	$ 11.17	$ 11.17
Volume (MMB/D)	5.80	1.11	2.92	3.88

* Includes $0.21 supplemental import fee.

CHAPTER IX

CONCLUSIONS REGARDING INCENTIVES FOR NON-ANS CRUDE PRODUCTION

As noted above, if ANS crude is subject to the ceiling price rules for upper tier oil, which is the category into which it would be placed under existing regulations, those rules would have no restraining effect on ANS wellhead prices for several years. Instead, the principal FEA program which will establish the wellhead price of ANS crude is, as noted in the previous chapter, the entitlements program. FEA is now considering at least three possible entitlement classifications for ANS. FEA is also considering whether to recommend that the ANS crude be included or excluded from the composite. Lastly, the

Administration has at least not ruled out the possibility of exchanging ANS crude with Japan for Persian Gulf crude delivered to the U.S. Gulf and East Coasts, as many persons and organizations have proposed. Since no decisions on these issues have been reached, the analysis herein explores the effects under all reasonably possible alternatives.

Estimates of the wellhead prices that should result from adoption of alternative entitlement classifications as well as exchanges with Japan have been developed. The product of the amount by which these prices are above or below the legal composite at the time, times the total volume of ANS crude sold at those prices, is also provided, since it is this amount by which the revenues of non-ANS producers could be increased or would have to be reduced in order to comply with the composite limitation, assuming ANS crude is kept in the composite calculation. No analysis is contained herein of the issue of whether ANS crude should remain in the composite calculation or, if it did remain in the composite and was below the legal composite price, whether the additional pricing flexibility that would be created should be used to raise ceiling prices for any categories of non-ANS production.

The scenarios used in this analysis were chosen to cover a wide range of policy options. Each is evaluated under three different rates of increase in the cost of imported crudes. The three rates, 5.5%, 7.5%, and 10%, were chosen to reflect the range of likely increases.

The evaluation of these scenarios is not intended to preclude other policy options, or to reflect any policy preference. A methodology for evaluating certain policy aspects has been developed, and *the results of several evaluations are presented to assist in the development of the final policy.*

Scenario I

ANS crude will be competitively priced at the refinery gate with imported and uncontrolled domestic crude on both the Gulf Coast and the West Coast. The ANS price will therefore rise as import prices increase.

Scenario II

ANS crude will be competitively priced at the refinery gate with upper tier domestic crude on both the Gulf and the West Coast. The ANS price will therefore increase at the same rate as upper tier prices. The schedule of upper tier prices has been developed without including ANS crude in the composite.

Scenario III

ANS crude will be competitively priced at the refinery gate with imported and uncontrolled domestic crude on the Gulf Coast and with upper tier domestic crude on the West Coast. ANS prices will therefore be a blend of those in Scenarios I and II.

Scenario IV

All West Coast surplus ANS crude will be exchanged with Japan for Persian Gulf light crude, and will be priced as if it were an imported crude when landed on the West and Gulf Coasts. U.S. tankers will be used to ship ANS crude to Japan. Increases in the ANS prices will follow those of uncontrolled crudes.

Scenario V

All West Coast surplus ANS crude will be exchanged with Japan for Persian Gulf light crude using U.S. tankers. The ANS will be classed as upper tier crude. Therefore, the incoming Persian Gulf crude will be classed as upper tier oil. The ANS crude used on the West Coast will also be classed as upper tier oil.

Scenario VI

All West Coast surplus ANS crude will be exchanged with Japan for Persian Gulf light crude. Shipments to Japan will be made in foreign flag carriers. The ANS crude used on the West Coast and the crude received on the Gulf Coast in the exchange will be classed as upper tier for entitlement purposes. As in Scenario V, the ANS crude prices will increase with the prices of upper tier oil.

Scenario VII

All West Coast surplus ANS crude will be exchanged with Japan for Persian Gulf light crude, and will be priced as if it were imported crude when landed on the West and Gulf Coasts. Foreign flag tankers will be used for all crude shipments.

The prices that refiners are expected to pay for the ANS crude under each scenario are established by the entitlement classification assigned by FEA. Classification as uncontrolled crude will cause the ANS price to be at par with that of imported, stripper, and Naval Petroleum Reserve crudes) [sic]. The assignment of ANS crude to the upper tier will cause its market value to be at par with upper tier crudes. In exchanges with Japan, the entitlement classification assigned to the incoming crude will set the U.S. market price for that crude. The exchange is expected to be on a barrel for barrel basis with an adjustment for quality and transportation. Therefore, as in any domestic exchange, the firm giving up crude assigns the value of the crude it gives up to the crude it receives, and includes any quality/transportation adjustment involved in the exchange.

Assumptions Underlying the Analysis

1. Shipments from Valdez begin in September 1977, and reach 1,200,000 B/D in December 1978. Shipments remain at this rate through 1981. (Table IX-1)

2. The average cost of imported crude is now $14.45. It is assumed to escalate twice yearly at annual rates of 5.5%, 7.5%, and 10%.
3. ANS crude, classed as uncontrolled crude, is valued at 25 cents below Persian Gulf light on the West Coast and 10 cents below Persian Gulf light on the Gulf Coast. Stated another way, ANS crude is valued below the average cost of all imported crudes in the United States (Tables IX-2 A, B, C). This value difference is 75 cents on the West Coast and 45 cents on the Gulf Coast.
4. The value of ANS crude, if classed by FEA as upper tier, is its value as an uncontrolled crude less the difference in entitlement value of uncontrolled and upper tier crudes. This difference is equal to the average uncontrolled price minus the average upper tier price. This analysis uses the upper tier prices projected under the FEA procedures for implementing the 10% escalation of the composite price.
5. Ocean transport tariffs escalate at a rate sufficient to cover the increases in variable shipping costs.
6. The volume of ANS crude used on the West Coast reaches 800 MB/D in July 1978, and remains at that level. The remaining crude is used on the Gulf Coast, directly or through an exchange.
7. A West Coast-Gulf Coast pipeline becomes operational in July 1979. Then, all crude shipments to the Gulf Coast are made via the pipeline, rather than by tanker through the Panama Canal. 400,000 B/D are shipped by this pipeline to Houston, Texas.
8. TAP tariffs of $5.10 through the first half of 1980 and $4.65 after that, are used in this analysis.
9. Exchanges with Japan are evaluated using foreign flag and U.S. flag tankers to ship ANS crude to Japan.

All the transportation savings created by these exchanges are, for this analysis, assumed to result in higher wellhead prices for the ANS crude.

TABLE IX-1

VOLUMES OF ANS CRUDE
(MB/D)

Month	Line Fill	Puget Sound	San Francisco	Los Angeles	Gulf Coast	Total
7/77	240	—	—	—	—	240
8/77	240	—	—	—	—	240
9/77	50	60	90	150	—	350
10/77	—	100	200	300	—	600
11/77	—	100	200	300	—	600
12/77	—	120	250	340	490	1200
1/78	—	120	250	340	490	1200
7/78	—	120	280	400	400	1200
↓		↓	↓	↓	↓	↓
12/81	—	120	280	400	400	1200

Methodology

1. *Market Value of ANS Crude*

The projected ANS market price on each Coast, if it is priced competitively with uncontrolled oil, is arrived at by subtracting the quality differential from the cost of uncontrolled crudes. The delivered price of ANS crude, if it is to be priced as upper tier oil, is established by subtracting the net entitlement difference between uncontrolled and upper tier oil from the ANS value as uncontrolled crude. This maintains the same relative quality/price relationship for the ANS crude when it is treated as upper tier oil as when it is classed with the uncontrolled oil. The refiners' cost, whether ANS is treated as upper tier oil or uncontrolled will be the same, since the difference in entitlements treatment offsets the difference in purchase costs.

The market values of ANS crudes on both coasts under the free world crude price inflation rates are shown in Table IX-2.

TABLE IX-2A

ANS VALUES IF IMPORTS INCREASE AT 5.5%

	Average Imports	ANS VALUE As Imports West	ANS VALUE As Imports Gulf	ANS VALUE As Upper Tier * West	ANS VALUE As Upper Tier * Gulf
2/77	14.84	14.09	14.39	12.16	12.46
1/78	15.28	14.53	14.83	12.41	12.71
2/78	15.68	14.93	15.23	12.75	13.05
1/79	16.11	15.36	15.66	13.11	13.41
2/79	16.55	15.80	16.10	13.47	13.77
1/80	17.00	16.25	16.55	13.85	14.15
2/80	17.47	16.72	17.02	14.22	14.52
1/81	17.95	17.20	17.50	14.62	14.92
2/81	18.44	17.69	17.99	15.02	15.32

TABLE IX-2B

ANS VALUES IF IMPORTS INCREASE AT 7.5%

Half Year	Average Import Cost	ANS VALUE As Imports West	ANS VALUE As Imports Gulf	ANS VALUE As Upper Tier * West	ANS VALUE As Upper Tier * Gulf
2/77	14.99	14.24	14.54	12.16	12.46
1/78	15.55	14.80	15.10	12.41	12.71
2/78	16.14	15.39	15.69	12.75	13.05
1/79	16.74	15.99	16.29	13.11	13.41
2/79	17.37	16.62	16.92	13.47	13.77
1/80	18.02	17.27	17.57	13.85	14.15
2/80	18.70	17.95	18.25	14.22	14.52
1/81	19.40	18.65	18.95	14.62	14.92
2/81	20.13	19.38	19.68	15.02	15.32

* See footnote on bottom of next page.

TABLE IX-2C

ANS VALUES IF IMPORTS INCREASE AT 10%

Half Year	Average Import Cost	ANS VALUE As Imports West Coast	Gulf Coast	As Upper Tier * West Coast	Gulf Coast
2/77	15.17	14.42	14.72	12.16	12.46
1/78	15.93	15.18	15.48	12.41	12.71
2/78	16.73	15.98	16.28	12.75	13.05
1/79	17.56	16.81	17.11	13.11	13.41
2/79	18.44	17.69	17.99	13.47	13.77
1/80	19.36	18.61	18.91	13.85	14.15
2/80	20.33	19.58	19.88	14.22	14.52
1/81	21.35	20.60	20.90	14.62	14.92
2/81	22.42	21.67	21.97	15.02	15.32

2. *Wellhead Price of ANS Crude*

The wellhead prices are calculated by subtracting the transportation charges from Alaska's North Slope from the market prices. Since the ANS crude is assumed to sell at its full market price in all the Gulf and West Coast markets, there will be at least two wellhead prices for the same crude. For this analysis, a weighted average wellhead price is developed for each scenario.

For example, using Scenario I, in the first half of 1978, the wellhead price is calculated as follows if ANS crude prices are uncontrolled:

* Upper tier values are independent of the inflation rate of imports. A constant 5.5% annual increase is projected for upper tier crudes.

TABLE IX-3

WELLHEAD PRICE CALCULATIONS

Market Point	Market Price less	Ocean Transport less	TAP Tariffs =	Wellhead Netback	Volume (M/bbls)
Puget Sound	$14.53	$0.74	$5.10	$8.69	120
San Francisco	14.53	0.96	5.10	8.47	250
Los Angeles	14.53	1.01	5.10	8.42	340
Gulf Coast	14.83	2.98	5.10	6.75	490

Average Wellehead Price =

$$\frac{(\$8.69 \times 120) + (\$8.47 \times 250) + (\$8.42 \times 340) + (\$6.75 \times 490)}{120 + 250 + 340 + 490}$$

$$= \$7.77$$

3. *Impact of including ANS in the actual composite price.*

The inclusion of ANS crude wellhead prices in the calculation of the composite price of all U.S. crudes will cause the composite to change from its value without ANS crude. If ANS crude wellhead prices are below the actual composite, they will lower the actual composite relative to the legal composite, and the opposite is true if ANS wellhead prices are above the actual composite.

For purposes of analysis herein, a "revenue differential," which is the amount average ANS wellhead prices will exceed or be less than the legal composite, times the total volume of ANS crude sold, has been computed for each pricing scenario. This "revenue differential" represents the amount by which, if ANS wellhead prices are included in the composite calculation, additional revenues from non-ANS production could be obtained (by raising the ceiling prices on such production) without exceeding the composite price ceiling. If the revenue differential is negative, it represents the amount by which revenues

from non-ANS production would have to be reduced in order to maintain compliance with the composite price ceiling.

The calculation of the revenue differential is for analytical purposes only. It should not be viewed as an indication of future pricing policy with regard to inclusion of ANS wellhead prices in the calculation of the composite or as an indication that, if they are included, the flexibility obtained by a positive revenue differential will be used to raise ceiling prices on non-ANS production.

The average wellhead price for each half year, the amount by which that price differs from the average legal composite wellhead price and the *monthly* revenue differentials for each scenario are shown in Tables IX-4, IX-5 and IX-6. Negative differentials are shown by enclosing them in parentheses. A summary of the price differentials projected for each scenario is shown in Table IX-7.

TABLE IX-4A

ANS WELLHEAD PRICES, DIFFERENTIALS FROM LEGAL COMPOSITE PRICES AND REVENUE DIFFERENTIALS

DIRECT U.S. USAGE

Import Crude Prices Escalate at 5.5% Annually

		SCENARIO I			SCENARIO II			SCENARIO III		
Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month
III/IV-77	8.85	7.40	1.45	53	5.47	3.38	123	6.26	2.59	95
I/II-78	9.28	7.80	1.48	54	5.66	3.62	132	6.62	2.66	101
III/IV-78	9.73	8.30	1.43	52	6.12	3.61	132	6.85	2.88	105
I/II-79	10.21	8.67	1.54	56	6.42	3.79	138	7.17	3.04	111
III/IV-79	10.71	9.38	1.33	48	7.05	3.66	134	7.83	2.88	105
I/II-80	11.23	9.78	1.45	53	7.38	3.83	141	8.18	3.05	111
III/IV-80	11.78	10.70	1.08	39	8.28	3.50	131	9.03	2.75	100
I/II-81	12.35	11.13	1.22	45	8.55	3.80	139	9.41	2.94	107
III-81	12.96	11.62	1.34	49	8.95	4.01	146	9.94	3.02	114

Entitlement Classification	Scenario I	Scenario II	Scenario III
Gulf Coast	Uncontrolled	Upper Tier	Uncontrolled
West Coast	Uncontrolled	Upper Tier	Upper Tier
Carrier to Japan	----	-----	-----

TABLE IX-4B

ANS WELLHEAD PRICES, DIFFERENTIALS FROM LEGAL COMPOSITE PRICES AND REVENUE DIFFERENTIALS

DIRECT U.S. USAGE

Import Crude Prices Escalate at 7.5% Annually

		Scenario I			Scenario II			Scenario III		
Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month
III/IV-77	8.85	7.55	1.30	47	5.47	3.38	123	6.32	2.53	92
I/II-78	9.28	8.05	1.23	45	5.66	3.62	132	6.63	2.65	97
III/IV-78	9.73	8.76	0.93	35	6.12	3.61	132	7.00	2.73	100
I/II-79	10.21	9.30	0.91	34	6.42	3.79	138	7.38	2.83	103
III/IV-79	10.71	10.20	0.51	19	7.05	3.66	134	8.10	2.51	95
I/II-80	11.23	10.80	0.43	16	7.38	3.83	141	8.52	2.71	99
III/IV-80	11.78	11.93	(0.15)*	(5)	8.20	3.58	131	9.44	2.34	85
I/II-81	12.35	12.58	(0.23)	(8)	8.55	3.80	139	9.89	2.46	90
III-81	12.96	13.31	(0.35)	(13)	8.95	4.01	146	10.40	2.56	93

Entitlement Classification

	Scenario I	Scenario II	Scenario III
Gulf Coast	Uncontrolled	Upper Tier	Uncontrolled
West Coast	Uncontrolled	Upper Tier	Upper Tier
Carrier to Japan	----	----	----

TABLE IX-4C

ANS WELLHEAD PRICES, DIFFERENTIALS FROM LEGAL COMPOSITE PRICES AND REVENUE DIFFERENTIALS

DIRECT U.S. USAGE

Import Crude Prices Escalate at 10% Annually

		Scenario I			Scenario II			Scenario III		
Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month
III/IV-77	8.85	7.73	1.12	[illegible]	5.47	3.38	123	6.40	2.45	89
I/II-78	9.28	8.43	0.85	31	5.66	3.62	132	6.79	2.49	91
III/IV-78	9.73	9.35	0.38	14	6.12	3.61	132	7.20	2.53	92
I/II-79	10.21	10.12	0.09	4	6.42	3.79	138	7.65	2.56	93
III/IV-79	10.71	11.27	(0.56)	(20)	7.05	3.66	134	8.46	2.25	82
I/II-80	11.23	12.14	(0.91)	(33)	7.38	3.83	141	8.97	2.26	82
III/IV-80	11.78	13.56	(1.78)	(65)	8.20	3.58	131	9.99	1.79	65
I/II-81	12.35	14.53	(2.18)	(80)	8.55	3.80	139	10.54	1.81	66
III-81	12.96	15.60	(2.64)	(96)	8.95	4.01	146	11.17	1.79	65

Entitlement Classification

	Scenario I	Scenario II	Scenario III
Gulf Coast	Uncontrolled	Upper Tier	Uncontrolled
West Coast	Uncontrolled	Upper Tier	Upper Tier
-ier to Japan	----	----	----

TABLE IX-5A

ANS WELLHEAD PRICES, DIFFERENTIALS FRO LEGAL COMPOSITE PRICES AND REVENUE DIFFERENTIALS

EXCHANGES WITH JAPAN

Import Crude Prices Escalate at 3.5% Annually

		SCENARIO IV			SCENARIO V			SCENARIO VI		
Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month
III/IV-77	8.85	7.65	1.20	44	5.72	3.13	114	6.05	2.80	102
I/II-78	9.28	8.05	1.23	45	5.93	3.35	122	6.26	3.02	110
III/IV-78	9.73	8.52	1.21	44	6.34	3.39	124	6.61	3.12	114
I/II-79	10.21	8.91	1.30	47	6.66	3.55	130	6.93	3.28	120
III/IV-79	10.71	9.35	1.36	50	7.02	3.69	135	7.29	3.42	125
I/II-80	11.23	9.72	1.51	55	7.32	3.91	143	7.63	3.60	132
III/IV-80	11.78	10.64	1.14	42	8.14	3.64	133	8.45	3.33	122
I/II-81	12.35	11.07	1.28	47	8.49	3.86	141	8.80	3.55	130
III-81	12.96	11.56	1.40	51	8.89	4.07	149	9.20	3.76	137

Entitlement Classification

	Scenario IV	Scenario V	Scenario VI
Gulf Coast	Uncontrolled	Upper Tier	Upper Tier
West Coast	Uncontrolled	Upper Tier	Upper Tier
Carrier to Japan	U.S. Flag	U.S. Flag	Foreign Flag

TABLE IX-5B

ANS WELLHEAD PRICES, DIFFERENTIALS FROM LEGAL COMPOSITE PRICES AND REVENUE DIFFERENTIALS

EXCHANGES WITH JAPAN

Import Crude Prices Escalate at 7.5% Annually

		SCENARIO IV			SCENARIO V			SCENARIO VI		
Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month
III/IV-77	8.85	7.80	1.05	38	5.72	3.13	114	6.05	2.80	102
I/II-78	9.28	8.32	0.96	34	5.93	3.35	122	6.26	3.02	110
III/IV-78	9.73	8.98	0.75	27	6.34	3.39	124	6.61	3.12	114
I/II-79	10.21	9.54	0.67	24	6.66	3.55	130	6.93	3.28	120
III/IV-79	10.71	10.17	0.54	20	7.02	3.69	135	7.29	3.42	125
I/II-80	11.23	10.74	0.49*	18	7.32	3.91	143	7.63	3.60	132
III/IV-80	11.78	11.87	(0.94)	(3)	8.14	3.64	133	8.45	3.33	122
I/II-81	12.35	12.52	(0.17)	(6)	8.49	3.86	141	8.80	3.55	130
III-81	12.96	13.25	(0.29)	(11)	8.89	4.07	149	9.20	3.76	137

Entitlement Classification

	Scenario IV	Scenario V	Scenario VI
Gulf Coast	Uncontrolled	Upper Tier	Upper Tier
West Coast	Uncontrolled	Upper Tier	Upper Tier
Carrier to Japan	U.S. Flag	U.S. Flag	Foreign Flag

TABLE IX-5C

ANS WELLHEAD PRICES, DIFFERENTIALS FROM LEGAL COMPOSITE
PRICES AND REVENUE DIFFERENTIALS

EXCHANGES WITH JAPAN

Import Crude Prices Escalate at 10% Annually

		SCENARIO IV			SCENARIO V			SCENARIO VI		
Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month
III/IV-77	8.85	7.98	0.87	32	5.72	3.13	114	6.05	2.80	102
I/II-78	9.28	8.70	0.58	21	5.93	3.35	122	6.26	3.02	110
III/IV-78	9.73	9.57	0.16	6	6.34	3.39	124	6.61	3.12	114
I/II-79	10.21	10.36	(0.15)	(5)	6.66	3.55	130	6.93	3.28	120
III/IV-79	10.71	11.18	(0.47)	(19)	7.02	3.69	135	7.29	3.42	125
I/II-80	11.23	12.08	(0.85)	(31)	7.32	3.91	143	7.63	3.60	132
III/IV-80	11.78	13.50	(1.72)	(63)	8.14	3.64	133	8.45	3.33	122
I/II-81	12.35	14.47	(2.12)	(77)	8.49	3.86	141	8.80	3.55	130
III-81	12.96	15.54	(2.58)	(94)	8.89	4.07	149	9.20	3.76	137

Entitlement Classification

	Scenario IV	Scenario V	Scenario VI
Gulf Coast	Uncontrolled	Upper Tier	Upper Tier
West Coast	Uncontrolled	Upper Tier	Uncontrolled
Carrier to Japan	U.S. Flag	U.S. Flag	Foreign Flag

TABLE IX-6A

ANS WELLHEAD PRICES, DIFFERENTIALS FROM LEGAL COMPOSITE
PRICES AND REVENUE DIFFERENTIALS

EXCHANGES WITH JAPAN

Import Crude Prices Escalate at 5.5% Annually

SCENARIO VII

Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month
III/IV-77	8.85	7.98	0.87	32
I/II-78	9.28	8.38	0.90	33
III/IV-78	9.73	8.79	0.94	34
I/II-79	10.21	9.18	1.03	38
III/IV-79	10.71	9.62	1.09	40
I/II-80	11.23	10.03	1.20	44
III/IV-80	11.78	10.95	0.83	30
I/II-81	12.35	11.38	0.97	35
III-81	12.96	11.87	1.09	40

Entitlement Classification

Gulf Coast	Uncontrolled
West Coast	Uncontrolled
Carrier to Japan	Foreign Flag

TABLE IX-6B

ANS WELLHEAD PRICES, DIFFERENTIALS FROM LEGAL COMPOSITE PRICES AND REVENUE DIFFERENTIALS

EXCHANGE WITH JAPAN

Import Crude Prices Escalate at 7.5% Annually

SCENARIO VII

Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff From Legal Composite	Revenue Differential $MM/Month
III/IV-79	8.85	8.13	0.72	26
I/II-78	9.28	8.65	0.63	23
III/IV-78	9.73	9.25	0.48	18
I/II-79	10.21	9.81	0.40	15
III/IV-79	10.71	10.44	0.27	10
I/II-80	11.23	11.05	0.18	7
III/IV-80	11.78	12.18	(0.40)	(15)
I/II-81	12.35	12.83	(0.48)	(18)
III-81	12.96	13.56	(0.60)	(22)

Entitlement Classification

Gulf Coast	Uncontrolled
West Coast	Uncontrolled
Carrier to Japan	Foreign Flag

TABLE IX-6C

ANS WELLHEAD PRICES, DIFFERENTIALS FROM LEGAL COMPOSITE PRICES AND REVENUE DIFFERENTIALS

EXCHANGE WITH JAPAN

Import Crude Prices Escalate at 10% Annually

SCENARIO VII

Period	Legal Composite $/BBL	Wellhead Price $/BBL	Diff. From Legal Composite	Revenue Differential $MM/Month
III/IV-77	8.85	8.31	0.56	20
I/II-78	9.28	9.03	0.25	9
III/IV-78	9.73	9.84	(0.11)	(4)
I/II-79	10.21	10.63	(0.42)	(15)
III/IV-79	10.71	11.51	(0.80)	(29)
I/II-80	11.23	12.39	(1.16)	(42)
III/IV-80	11.78	13.81	(2.03)	(74)
I/II-81	12.35	14.78	(2.43)	(89)
III-81	12.96	15.85	(2.89)	(105)

Entitlement Classification

Gulf Coast	Uncontrolled
West Coast	Uncontrolled
Carrier to Japan	Foreign Flag

TABLE IX-7

SUMMARY OF DIFFERENTIAL FROM LEGAL COMPOSITE PRICES CREATED BY INCLUDING ANS IN THE COMPOSITE
($ per barrel)

Refiner Entitlement Classification: Gulf Coast	West Coast	Ocean Carrier	Annual Rate of Increase in the Cost of Imported Crude: 5.5%	7.5%	10%
Refine only in the U.S.					
Uncontrolled	Uncontrolled	Jones Act	$1.40	$1.25 → (0.40)	$0.95 → (2.50)
Upper Tier	Upper Tier	Jones Act	3.60	3 60	3.60
Uncontrolled	Upper Tier	Jones Act	3.00	2.60	2.30
Exchange with Japan					
Uncontrolled	Uncontrolled	U.S. Flag	$1.40	$0.95 → (0.25)	$0.80 → (2.50)
Upper Tier	Upper Tier	U.S. Flag	3.30-4.00	3.30-4.00	3.30-4.00
Upper Tier	Upper Tier	Foreign Flag	3.00-3.60	3.00-3.60	3.00-3.60
Uncontrolled	Uncontrolled	Foreign Flag	0.95	0.70 → (0.55)	0.55 → (2.75)

NOTE: (1) The revenue differential can be obtained by multiplying the differential from the composite price by 36.5 million, which is the number of barrels of ANS crude that will be sold in an average month.

(2) A single value indicates that the differential is reasonably constant from 1977 through 1981.

(3) A range of values (i.e. 120-145) indicates that the differential varies within this range; an arrow indicates that the differential changes from the first to the second amount from 1977 to 1981.

CHAPTER X

CONCLUSIONS REGARDING INCENTIVES FOR FURTHER ANS DEVELOPMENT

In Chaper IX, this report considered whether Alaska North Slope production would lessen needed incentives for sustaining or enhancing crude oil production in the remainder of the United States and determined that under the assumptions used, it would not do so at all under Scenario II, which approximates the treatment ANS crude would receive if no amendments were made to existing regulations, but would have such effect between June 1978 and September 1981 under some other pricing scenarios, depending on the rate at which OPEC prices will increase. The other portion of Section 8(g) (1) requires the President to report whether the regulation promulgated under Section 4(a) and in effect on April 15, 1977, will provide positive price incentives for the development of the domestic crude oil production of up to 2,000,000 B/D, transported through the Trans-Alaska pipeline.

The question of the appropriate price incentives required to develop the 2,000,000 B/D of crude oil referred to in Section 8(g) (1) is highly speculative at this time for several reasons. First, expansion of the TAPS pipeline above 1.5 or 1.6 million B/D would require the smaller and undeveloped Lisburne and Kaparuk reservoirs to be developed.

No engineering studies have been released on the Kuparuk and Lisburne oil pools. Little information, other than the press releases concerning the results of well tests, is available on these oil pools. However, speculative recoverable reserves are estimated to be in the order of 1.3 to 2.1 billion barrels, versus 9.0 to 9.2 billion barrels of recoverable reserves estimated to be contained

in the Sadlerochit, or main Prudhoe Bay, reservoir, from which production will begin this year.

In the absence of published engineering studies regarding the recoverable reserves in the Lisburne and Kuparuk pools, the magnitude of the development costs which are essential to evaluate the adequacy of price incentives is unknown. However, the Mortada Study* does attempt to make some judgment about the gross magnitudes of reserves and developmental expenses required. Some of the factors which are pertinent are given below.

According to Mortada, the Lisburne reservoir is considered to be a tight formation, which will produce significantly less oil per well than will the main Sadlerochit reservoir. On the other hand, the higher cost per barrel of production would be partially offset by the lower estimated incremental investment required to increase the Trans-Alaskan pipeline capacity to accommodate the higher production that development of the Lisburne reservoir would make possible. Also, the quality of the Lisburne oil is superior to the Sadlerochit, approximately 40° API gravity. On the other hand, Kuparuk oil is significantly lower in quality than Sadlerochit, approximating 22° API gravity, on the order of typical California crude oil.

Unlike the main pool, the two smaller ones are estimated to be able to produce only 1,000 to 2,000 B/D per well compared to 9,000-10,000 B/D in the Sadlerochit. Moreover, secondary and tertiary recovery techniques will have to be used immediately in the smaller reservoirs in order to sustain production rates. This will consist of:

Kuparuk—Water injection or water injection plus carbon dioxide (CO_2)

* *The Determination of Equitable Pricing Levels for North Slope Alaskan Crude Oil.*

Lisburne—Miscible phase displacement using CO_2 or light hydrocarbons (propane or ethane) from the Sadlerochit gas stream.

The smaller per well production and the need to use enhanced recovery techniques at the outset will result in higher field development costs for the smaller reservoirs than for the Sadlerochit. However, these will be offset to some extent by the lower incremental investments in TAPS required to increase throughput from 1.6 million B/D to 2.0 million B/D.

Levels of Incentives Required

There are several ways in which required incentives can be determined. One is the risk adjusted rate of return. A risk free or other basing rate of return is increased under this approach to account for riskier ventures. The Mortada Study uses a risk multiplier approach which multiplies the actual incurred exploration and development expense by a factor to take into account the number of unsuccessful ventures which must in the long run be "covered" by returns from the successful ones. The "standard" rate of return is then applied to the risk multiplied exploration and development costs.

The Mortada Study assumes a base case where ANS crude sells at levels of Saudi Arabian crude landed on the West Coast. It then computes the rate of return provided by applying a risk multiplier of 4 (i.e., a success ratio of 1 in 7) to industry's expenditures on the North Slope from 1959 to the discovery of Prudhoe Bay in 1968. Different risk multipliers affect the rate of return, as is shown in the following table.

TABLE X-1

RATE OF RETURN WHERE: [1]

Assume 2/3 of oil sold on the West Coast; 1/3 moved East
Import Tier Entitlement

CASE	
R=1	14.0%
R=2	13.0%
R=4	11.8%
R=8	9.9%

The Mortada Study makes the judgment that a 12% discounted real return after income tax would be reasonable, applying the risk multiplier only to increase prediscovery exploration expenditures. In its analysis, making the highly speculative assumptions about recoverable reserves and per barrel rates of production from the Lisburne and Kuparuk pools, Mortada determines that applying a risk multiplier of 3 and a 1976 crude price at Valdez of $11.50 per barrel gives a discounted cash flow, after tax, real rate of return on investments in the Prudhoe Bay Field and in TAPS equal to 12%.

Increasing the risk multiplier reduces the computed rate of return on what is then a larger "risk adjusted" investment. The actual level of risk multiplier which is appropriate in the sense of eliciting continued private sector exploration and development efforts is unknown, and in fact this might vary significantly from company to company, based on an individual corporation's differing individual success rate over time. Similarly, the

[1] The risk multiplier R is computed by the formula R= 1 + .5 (S-1) where S is the inverse of the success ratio in exploration activity, taking into account the Internal Revenue Code which permits the explorationist to write off the cost. For example, if every venture were successful R=1 + .5 (1-1) =1. If one of two ventures succeeded R=1 + .5(1)=1.5. A success ratio of one in seven implies R=1 + .5 (7-1)=4. The multiplier is less than the reciprocal of the success ratio because it considers the tax write offs which reduce the losses on unsuccessful ventures.

actual prospective rate of return which would be necessary for individual producing companies to commit capital to the development of the Lisburne and Kuparuk pools is speculative, and might vary from company to company based on different previous experience in crude oil exploration and development and on other alternative investment opportunities. For example, Mobil owns Marco (formerly known as Montgomery Ward) and other non-crude oil energy investments. Most other producing companies are diversified and have existing investment in coal, uranium and other non-crude oil investment opportunities. Even those who do not wish to diversify into non-crude oil areas still have the opportunity to purchase additional leases and to develop other non-North Slope Alaskan existing properties.

Hearing Testimony on the Mortada Study

ARCO. Several of the ANS producers testified regarding the Mortada risk multiplier and rate of return assumptions. Atlantic Richfield Company (ARCO) testified regarding the rate of return to be allowed on investments made to date at Prudhoe Bay and the rate of return required to promote further testing and development of the Kuparuk and Lisburne formations and to encourage further exploration on the North Slope. In ARCO's view the Mortada Study, while analytically sound, used risk factors that were too low. (The risk factor of R=3.0 to 4.5 used by Mortada is equivalent to success ratios of 1 successful well in 5, to 1 in 8.) ARCO, as well as other respondents to the Notice of Inquiry which elicited the testimony, took issue with the use of this low a risk factor, which Mortada had stated had been reduced because of the Department of the Navy's intensive exploration program carried out on Naval Petroleum Reserve 4 from 1944 to 1953. Mortada felt that the Navy program had contributed significantly to the geological knowledge of the North Slope and that this

should reduce the applicable risk factor. ARCO did not agree with Mortada that the Navy's exploration of NPR-4 had significantly reduced industry's risks, in that neither the Navy nor the U.S. Geological survey had performed any seismic, gravity or surface geology work which covered or was related in any way to the Prudhoe Bay structure. The closest Navy discovery to the Prudhoe Bay field was the producible, but uneconomic in ARCO's view, discovery at Umiat, over 100 miles from the Prudhoe Bay discovery well. On the basis that only one exploratory well in ten finds any commercial reserves, and that only 1 in 50 makes a discovery as large as one million barrels of oil or six billion cubic feet of gas, ARCO felt that a risk factor of 1 in 10 would be extremely conservative for ANS crude.

ARCO also took issue with the Mortada rate of return assumptions regarding the Lisburne and Kuparuk formations, stating that Mortada had overstated the rate of return to be earned from these pools by failing to charge them their full proportionate share of pipeline transportation costs. ARCO felt that to credit all the benefits of reduced pipeline tariffs only to the Lisburne and Kuparuk formations was inappropriate in computing the rate of return, as each property should, in ARCO's view, bear its proportionate share of transportation costs because of differences in ownership shares and the possibility of other commercial discoveries being made on the North Slope.

Exxon. Exxon testified that the Navy's NPR-4 exploration prior to 1953 increased, rather than reduced, the risk factor associated with the Prudhoe Bay discovery. Exxon stated that only 1 of the 37 wells drilled by the Navy encountered the Sadlerochit formation and in that test the sand was found to have a low permeability and showed no evidence of oil. Although some oil shows were obtained in other wells, no commercial discoveries were made by the Navy in its extensive program.

Exxon also criticized the Mortada risk multiplier as being extremely low, stating that many times more than eight attempts per exploratory success were required, even in a basin which had proved productive. Exxon criticized the apparent failure of the study, in its view, to apply the effect of exploration cost increases since 1963 to the finding cost of Prudhoe Bay. Exxon also criticized the assessment of risk on the basis of a single exploration basin, noting that the success in one basin must offset failures in others, such as the Destin Anticline off Florida where expenditures of over $1.11 billion in 1973 resulted in drilling nothing but dry holes.

Sohio. Sohio included in its testimony the text of a letter from the Manager of Exploration Economics for BP Alaska, Inc., who was involved as a geologist in the early 1960's in the exploration which led to the discovery of the Prudhoe Bay Field. His letter stated that the Navy's intensive NPR-4 exploration program had, if anything, increased the risk factor due to the very negative results of the program. It had concentrated on different geological formations lying above all the producing horizons in the Prudhoe Bay area. The only well to reach the Sadlerochit Group sandstones had been found to be tight and water-wet. Not only were the reservoir targets different than those which eventually proved successful but were also of a different structural type. According to the letter, the Navy's plans were concentrated in the large well-defined surface anticlines of the Northern Foothills, whereas the Prudhoe Bay and Colville structures, which are geographically distant, were associated with a broad coastal uplift not apparent from the surface and could only be defined by using specialized and advanced geographical techniques.

Sohio suggested, therefore, that the risks in arctic resource development were and are greater than might be inferred from Mortada's figures.

State of Alaska Department of Revenue. The State of Alaska suggested that the Mortada Study had a serious failing in computing the rate of return. In analyzing the question, Mortada had, according to the State, aggregated into one cash flow all the investments for TAPS and for the Sadlerochit, and had estimated expenditures for the Lisburne and Kuparuk. This was inappropriate in the State's view, because the additional hundreds of millions of dollars which would have to be spent on Lisburne and Kuparuk would have to be self-justified.

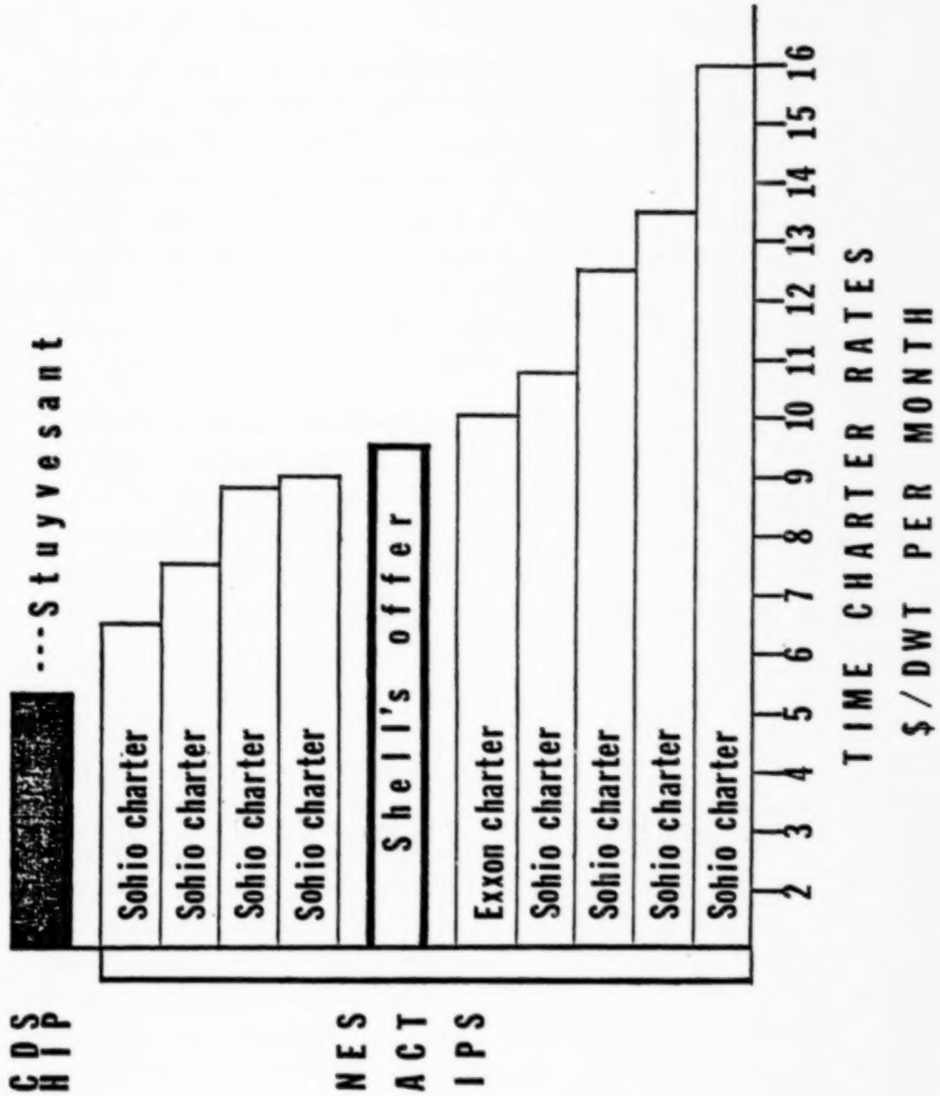
Already made investments in TAPS and Sadlerochit represented sunk costs. The State's figures indicated an \$11.31 to \$13.00 price in 1976 dollars would be necessary to provide Mortada's after tax 12 percent rate of return for the Lisburne and Kuparuk pools.

Morgan Stanley & Co., Inc. Morgan Stanley, investment bankers for Sohio, Exxon, Mobil and BP, testified that Mortada's 12% return figure, if projected from the outset, might have precluded financing the project. Morgan Stanley suggested that the 12% return figure might be appropriate for regulated industries where an exclusive franchise assured such a return. However, no one was assuring the price of Alaskan or world oil. Morgan Stanley suggested that in its experience no oil company would undertake a project involving any significant risk for a projected return of under 15%. Morgan Stanley stated that the industry will earn returns of approximately 22% in the British North Sea, where they have experienced retroactive majority participation by the British Government. Further, financial institutions investing in equity of leased tankers for the Valdez trade backed my "hell-or-high water", all events charters from the oil companies, will earn 15%. In this context Morgan Stanley could not accept a 12% return as equitable for the North Slope project.

FEA Approach

It is apparent from the foregoing that any effort to determine the appropriate level of prices for ANS oil that will provide a fair return on existing investments and provide incentives for further development is fraught with uncertainty and speculation. The same has been true of prior efforts to establish with precision the extent to which EPCA and prior FEA rulemaking provide sufficient incentives for further development of non-ANS resources.

In any event, FEA intends to further analyze the information that is available on this subject before issuing a proposed rulemaking that will establish prices and entitlements treatment for ANS production, and will announce in that proposed rulemaking its tentative conclusions on the appropriate level of ANS wellhead prices.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Sohio charter
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Sohio charter
JONES ACT SHIPS
Shell's offer
Exxon charter
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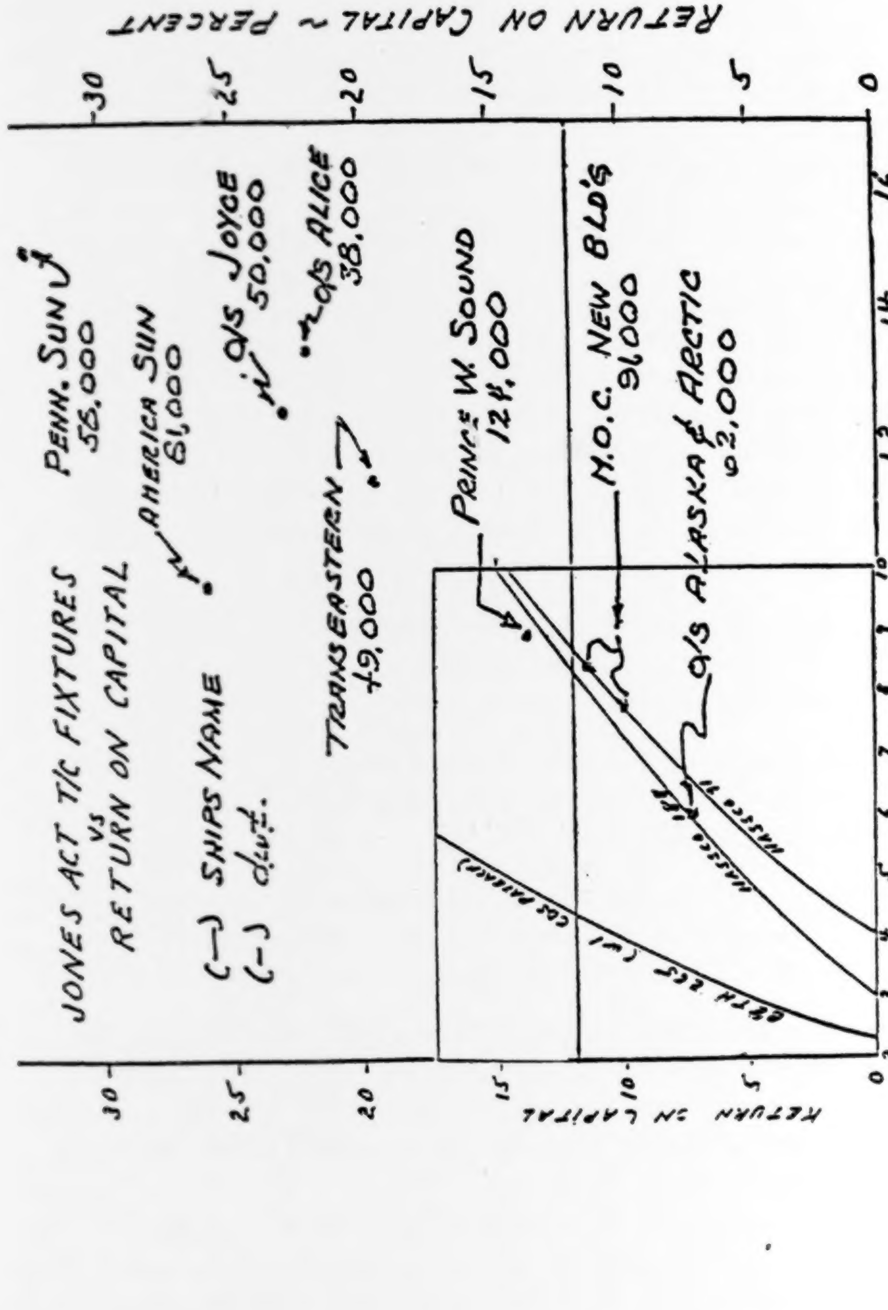
TIME CHARTER RATES
$/DWT PER MONTH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(—) d.w.t.
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AMERICA SUN 81,000
O/S JOYCE 50,000
O/S ALICE 38,000
TRANSEASTERN 49,000
PRINCE W. SOUND 128,000
M.O.C. NEW BLD'S 91,000
ALASKA & ARCTIC 92,000
O/S
RETURN ON CAPITAL ~ PERCENT
RETURN ON CAPITAL
T/C RATE ($/DWT/MO)
$/DWT/MO

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF WILLIAM KARAS

I am William Karas, a member of the firm of Galland, Kharasch, Calkins & Short representing plaintiffs Alaska Bulk Carriers and Trinidad Corporation in this case. The firm represented parties who filed opposition in Docket S-565 with respect to the July 8, 1977 application of Polk Tanker Corporation. I make this affidavit with respect to the following matters based on my personal knowledge of the facts stated.

1. In response to discovery requests made by plaintiffs, the Government has supplied, inter alia, the following documents, copies of which are attached hereto:

Opinion of Maritime Administration General Counsel dated December 10, 1970 with respect to Seatrain Lines, Inc. proposal.

Letter of September 8, 1964 from the Secretary of Commerce to Grace Line, Inc. with respect to a Grace Line proposal for repayment of subsidy.

2. The Maritime Administration has also supplied the firm with a copy of an opinion of the Acting General Counsel, Maritime Administration, with respect to an application of Grace Line Inc. of June 15, 1964. A copy is attached.

3. Copies of (a) the application of Polk Tanker Corporation dated August 25, 1977 requesting certain actions with respect to the TT STUYVESANT, (b) the August

26, 1977 letter of Polk Tanker Corporation withdrawing the July 8, 1977 application, (c) two letters each dated August 31, 1977 from the Maritime Administration/Maritime Subsidy Board to Polk Tanker were supplied to the firm by the agency only at our request made after we learned of the agency's actions through a press release dated September 1, 1977 issued by MarAd. Until the press release came to our attention, we received no notice of these documents or of the agency's actions set forth in the August 31, 1977 letters.

/s/ William Karas
WILLIAM KARAS

Signed and sworn before me
this 12th day of October, 1977

/s/ [Illegible]

Notary

My Commission Expires: April 30, 1982

UNITED STATES GOVERNMENT
U.S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION

DATE: July 28, 1964

In reply refer to:

Memorandum

TO : Chairman, Maritime Subsidy Board

FROM : Acting General Counsel

SUBJECT: GRACE LINE INC.—Application of June 15, 1964, for modification of contracts applicable to the SSs SANTA ELINA and SANTA LEONOR to free the vessels from the restrictive provisions included pursuant to Section 506 of the Merchant Marine Act, 1936, as amended, and for permission to sell them to a United States operator for operation in the domestic trade of the United States

The question has been asked as to whether the Maritime Subsidy Board has the legal authority to amend Construction-Differential Subsidy Contracts Nos. FMB-89 and FMB-90 to remove from those contracts between the Federal Maritime Board and Grace Line Inc. the provisions incorporated therein pursuant to Section 506, Merchant Marine Act, 1936, as amended. We are advised that the continuation of the contract provisions required by Sections 503 and 802 involving U.S.-flag documentation and the Government's requisitioning authority are not at issue.

It is my opinion that if Grace repays to the Government the unamortized construction differential subsidy paid by the Government for their reconversion the Maritime Subsidy Board may, without any legal objection, amend Contracts Nos. FMB-89 and FMB-90 to remove from those contracts the provisions relating to Section 506.

Section 506, as amended by Public Law 86-518 reads as follows:

> "Sec. 506. Every owner of a vessel for which a construction differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Commission that proportion of one twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Commission may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Commission may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Commission, upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Commission as such temporary period bears to the entire economic life of

the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period."

The "economic life" of a vessel was established initially by the Merchant Marine Act, 1936, at 20 years. In Public Law 86-518 (1960) the "economic life" of vessels was extended to 25 years (except for liquid bulk carriers).

Public Law 88-225 further amended Section 506 to add the following to the contract amendment provision:

> "Provisions in such contracts affecting vessels covered by this Act providing for refund of construction-differential subsidy for domestic operations under section 506 of the Merchant Marine Act, 1936, and costs of national defense features for commercial use shall be amended so that for such refund payments made for the period after December 31, 1959, the base upon which such refund payments are computed annually thereafter shall be the undepreciated amount of subsidy or the national defense feature, as the case may be, as at December 31, 1959, divided by the years of life of the vessels as provided under this Act, remaining after December 31, 1959."

The effect of this amendment was to provide the same formula for Section 506 that had previously been provided for other sections of the 1936 Act.

In the course of the hearings before the Senate and House Committees in April and July, 1963 on identical bills S. 1172 and H.R. 6813, (which became Public Law 88-225) the Maritime Administrator, Mr. Alexander, stated:

> "We also believe that the obligation to repay construction-differential subsidy for operation in domestic trade was intended to be, and should be, terminated at the end of the economic lives of the vessels."

In enacting Public Law 88-225, there was not included in its provisions a proposed specific provision for the termination of payments at the end of the vessel's statutory life. The Senate Committees explanations for the elimination of this specific provision from the bill as enacted (Public Law 88-225) was for the reason that such provision was unnecessary in that the amortization formula prescribed made it clear that no refunds of construction subsidy would be required after the vessel's statutory life. Attached is a copy of a letter of February 5, 1964, of the Maritime Administration's General Counsel to Matson Navigation Company stating that it is our opinion that the obligation to repay the subsidy for domestic operations ends with the vessel's statutory life.

It is to be noted that Section 506 as originally enacted read as follows:

> "SEC. 506. *It shall be unlawful to operate any vessel for the construction of which any subsidy has been paid pursuant to this title, other than exclusively in foreign trade,* or on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at an island possession or island territory of the United States, *unless the owner of such vessel shall receive the written consent of the Commission so to operate and prior to such operation shall agree to pay to the Commission, upon such terms and conditions as the Commission may prescribe an amount which bears the same proportion to the construction subsidy theretofore paid or agreed*

to be paid (excluding cost of national-defense features as hereinbefore provided), as the remaining economic life of the vessel bears to its entire economic life. If an emergency arises which, in the opinion of the Commission, warrants the *temporary* transfer of a vessel, for the construction of which any subsidy has been paid pursuant to this title, to service other than exclusive operation in foreign trade, the Commission may permit such transfer; PROVIDED, That no operating-differential subsidy shall be paid during the duration of such temporary or emergency period, and such period *shall not exceed three months.* Every contractor receiving a contract for a construction-differential subsidy under the provisions of this title shall agree that if the subsidized vessel engages in domestic trade on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or loads or discharges cargo or passengers at an island possession or island territory as permitted by this section, that the contractor will repay annually to the Commission that proportion of one-twentieth of such construction subsidy as the gross revenue of such protected trade bears to the gross revenue derived from the entire voyages completed during the preceding year." (Underlining added).

In the 1938 amendments to the Merchant Marine Act, 1936, Section 506 was rewritten and the language dealing with a consent to operate in domestic trade if unamortized subsidy is repaid was dropped out.

The House Merchant Marine and Fisheries Committee in commenting upon the amended Section 506 stated: (H.R. Report No. 2168-75th Congress, 3rd Session)

> "Section 506 deals with the services upon which vessels which have been built with a construction-differential subsidy may operate and provides for the repayment of proportions of the subsidy in case the vessel is used otherwise. The section has been entirely rewritten in order to remove ambiguities arising from the method of describing the services other than foreign. As rewritten the section clearly sets forth the obligation of the owner to use the vessel in foreign trade, and, if the vessel is operated in the domestic trade on certain definitely stated services, to repay certain proportions of the subsidy. If the vessel is used, with the consent of the Commission, in the domestic trade in services other than those enumerated, *the obligations of the owner to repay part of the subsidy are clearly defined.*
>
> "*No fundamental change in the original purpose of the section has been effected.*" (Underscoring supplied).

The Committee on Commerce in reporting on the amended language of Section 506, stated (S. Report No. 1618—75th Congress, 3rd Session):

> "Section 506 has been entirely rewritten *to remove ambiguities and confusion.*
>
> "This section now makes it unlawful for the owner of any vessel on which a construction-differential subsidy has been paid to operate it, without the written consent of the Commission other than exclusively in foreign trade or in other enumerated voyages to foreign ports which may include domestic ports. When an emergency arises which, in the opinion of the Commission, warrants the temporary transfer of such a vessel to domestic trade, the Commission may permit the transfer. No operating-differential subsidy shall be paid during an emergency period, which shall not exceed 3 months. These

provisions are definite. The section further provides, however, that in the event the owner operates a vessel on which a construction-differential subsidy has been paid in services other than those which are not unlawful, he shall repay to the Commission a prescribed portion of the construction-differential subsidy. *It is very difficult to determine whether or not these instances in which repayment is required are restricted to the cases of emergency and to periods of 3 months.*

"*As the section is rewritten, it is perfectly clear that unless the owner operates exclusively in foreign trade, he must repay a portion of the construction-differential subsidy for any service in which the vessel is engaged which includes domestic ports en-route to or from foreign ports, as specifically described.* It is further provided that the Commission may consent in writing to the temporary transfer of such a vessel to services other than those enumerated for periods not exceeding 6 months in any year whenever the Commission may determine that such transfer is necessary. When such consent is given, it must be conditioned upon the owner's agreement to repay a specified portion of the construction-differential subsidy. No operating-differential subsidy shall be paid during the temporary period.

"It is believed that the section, as rewritten, will result in improved administration and will protect the interests of the Government and those of the carriers, both foreign and domestic." (Underscoring supplied).

In our view, the quoted portions of the legislative history of the 1938 amendments demonstrate that Congress intended to clarify the domestic services which were authorized and to remove any question of the authority for

temporary periods of domestic operations, all of which would clearly require repayment of subsidy. However, there is no indication that these changes were intended to preclude elimination of such partial repayments of subsidy if the Government is willing to consent to a lump sum repayment of subsidy based upon the same formula of recovery that is provided for shorter periods. Accordingly, it is my opinion that the rewording of Section 506 is not to be construed as an intent to ban an amendment of a construction-differential subsidy contract to permit domestic operation upon repayment to the Government of the unamortized construction-differential subsidy and that the elimination of the exclusive foreign trade obligation can be effected by the expiration of the vessel's statutory life or by the repayment of the unamortized subsidy.

As has been noted, we have already expressed the opinion that no repayment of subsidy for domestic operation is required after a vessel reaches the end of its statutory life cycle. The question now is whether an owner may "accelerate" his vessel's release from the Section 506 restrictions by prepayment of the unamortized (or undepreciated) balance of the Government's subsidy contribution.

The American operator in the domestic service is required by law to build his ship in an American shipyard; that is, he is required to pay the full domestic price of his ship. Since the Owner, aided with the grant of Title V construction-differential subsidy, secures his ship at a cost equivalent to a foreign price (domestic price less the subsidy granted by the Administration), the Owner is required by Section 506 to, in effect, pay the domestic price if the ship is operated in the domestic trade. This is accomplished by a repayment to the Government of the subsidy applicable to that proportion of the vessel's statutory life during which it is operated in the domestic

trades. The inclusion in the computation of revenues applicable to the domestic leg is designed to provide a reasonable criteria of repayment on the basis of benefits to the Owner by virtue of domestic calls on a foreign route. Upon the basis of the rationale for the repayment of subsidy, it appears that if the Government receives the full benefit of its subsidy by the Owner's operation in the foreign trade and the compliance with the other construction differential subsidy contract obligations for the statutory life of the vessel, or if, in the case of a vessel with an age less than the statutory life, the unamortized subsidy is repaid to the Government, the Owner should be in the same position as if he had paid the full domestic price; that is, he should not be required to make further repayments, and should not be bound to an exclusive foreign trade obligation. Stated another way, the repayment in full of any undepreciated balance (based upon the statutory life cycle) of the subsidy, would place the Owner of a vessel on which construction-differential subsidy has been paid in the same relative position as a domestic carrier who had paid the U. S. costs for his ship. We think this is indicated by the last sentence in the above-quoted Senate Report No. 1618, 75th Congress, 3d Session, that the repayment provisions "will protect the interests of the Government and those of the carriers, both foreign and domestic."

In summary, it is my opinion that if Grace repays to the Government the unamortized construction-differential subsidy paid by the Government for the reconversion of the SS SANTA ELIANA and the SS SANTA LEONOR, there is no legal objection to the amendment of Contracts No. FMB-89 and No. FMB-90 to remove from these Contracts the Section 506 provision.

/s/ Graydon L. Andrews
GRAYDON L. ANDREWS

[SEAL]

U.S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION

LEGAL OPINION

Date: December 10, 1970

Reply to
Attn of: 220

Subject: Seatrain Lines, Inc.—Domestic operation of vessels in the domestic trade upon repayment of construction-differential subsidy

To: 520

By memorandum dated November 12, 1970, you advise that Seatrain, in connection with an application on behalf of its wholly-owned subsidiaries for CDS under Title V of the Merchant Marine Act, 1936, as amended, to aid in building two 230,000 DWT tankers, has, among other things, made the following statement:

> "In the event Alaska or other domestic movements require these vessels, they can be diverted to the domestic trades with the Maritime Administration's approval for up to six months in each calendar year when required upon repayment of a proportionate share of the CDS. They could be diverted to the domestic trade for their full economic life upon repayment of the full unamortized portion of the CDS."

The question asked in your memorandum is as follows:

> "Please advise whether Seatrain's proposal, namely the *permanent* operation of the vessels in the do-

mestic trade upon the repayment of the unamortized portion of CDS, is in conflitc with Section 506 and the basic policies of the Act itself."

It is my opinion that the foregoing proposal, which is part of an application for CDS, conflicts with the basic purposes of the CDS provisions of the Act. While it is true that section 506 does provide for the possibility of six months of domestic operation each year, and the Comptroller General did permit the lifting of the section 506 domestic restrictions upon repayment of the unamortized CDS on two ships which had previously been converted to carry containers, it would not be proper to base consideration of the initial application for CDS upon an assumed agency exercise of discretion to permit six months of domestic operation each year, or upon a holding by the Comptroller General applied in a single instance involving old ships which no longer had any economic use to the owner.

Section 506, in the second sentence thereof, provides that a ship built with CDS may be transferred to a service other than the services enumerated in the first sentence with the consent of the Maritime Subsidy Board for a period not exceeding six months. Seatrain's proposal indicates that the tankers could, if needed in the Alaska or other domestic trades, be transferred to such trades for up to six months each year with a proportionate payback of CDS.

The legislative history of section 506 shows that this provision for transfer was intended for emergency or temporary purposes. As originally enacted, section 506 provided in part as follows:

> "If an emergency arises which, in the opinion of the Commission, warrants the temporary transfer of a vessel, for the construction of which any subsidy has been paid pursuant to this title, to service other than exclusive operation in foreign trade, the Commission may permit such transfer: Provided, That no operating differential subsidy shall be paid during the duration of such temporary or emergency period, and such period shall not exceed three months."

While the specific references to a transfer for emergency and temporary purposes were not retained in a 1938 amendment, Congress intended no essential change. In H.R. Report No. 2168, the House Committee on Merchant Marine and Fisheries stated the following:

> "No fundamental change in the original purpose of the section has been effected."

The Senate Committee on Commerce in S. Report No. 1618 said as follows regarding the amendment to section 506:

> "It is believed that the section as rewritten will result in improved administration and will protect the interests of the Government and those of the carriers, both foreign and domestic."

Since the provision for transfer to other services than those enumerated in the first sentence of section 506 is intended for emergency or temporary purposes, it would appear to be inconsistent with this intention to base the necessary findings for a CDS award ~~on~~ transfers of a non-temporary or emergency nature and which might involve a total period equal to one-half the economic life of each ship if six months of each year involved domestic operations.

Seatrain's proposal also suggests that the tankers could be operated without restriction in the domestic trades upon repayment of the full unamortized portion of the CDS. Neither section 506 nor any other provision of the Act relating to the CDS provides for releasing a CDS built ship from the domestic trade restrictions imposed

by section 506 upon repayment of unamortized CDS. However, in a decision letter dated September 30, 1964 (B-155036) the Comptroller General concurred in the opinion of the Department of Commerce that the Maritime Subsidy Board had the authority to amend construction-differential subsidy contracts to free the ships built with the aid of subsidy granted under such contracts from the restrictive provisions incorporated therein pursuant to section 506. Apparently Seatrain, in proposing the possibility of entirely lifting the section 506 restriction, is relying upon the Department opinion and concurrence by the Comptroller General.

While it is acknowledged that this opinion and concurrence therein did permit the lifting of the section 506 restriction from existing ships in a particular instance, it would appear inconsistent with the basic purpose of CDS to build ships for the U.S. foreign trade to consider an application for CDS based on initial acceptance of the premise that at any time after the building of the ships, the operator might obtain a release from the section 506 restrictions by repayment of unamortized CDS. Furthermore, since the opinion and concurrence related to the authority of the Board to amend contracts, it would be necessary to establish in any particular instance that some consideration would flow to the Government as an integral part of an amendment lifting the section 506 restrictions. To approve an application for CDS on the basis proposed by Seatrain would, in effect, bind future Boards to exercise a discretionary authority without any regard for whether, in the future, the Government would receive adequate consideration in exchange for the lifting of the restrictions. The consequence of Seatrain's proposal, if accepted, would be to convert a matter of future exercise of discretionary authority by the Board into a present right of Seatrain, at its option, to lift the restrictions by CDS repayment.

Such a result is not in keeping with the basic policies of the Act and conflicts with the scope of discretionary authority intended to be vested in the Board.

/s/ H. Clayton Cook, Jr.
H. CLAYTON COOK, JR.
General Counsel

QM91/125-23:640

September 8, 1964

Grace Line Inc.
3 Hanover Square
New York, New York 10004

Gentlemen:

Receipt is acknowledged of your letter of August 27, 1964, returning the carbon copy of my letter notice to you of August 7, 1964, advising of the action taken by the Maritime Subsidy Board on August 5, 1964, relating to the SSs SANTA ELIANA and SANTA LEONOR. The copy of the letter notice was signed by your Mr. H. R. Logan, indicating the acceptance of the action by Grace Line Inc.

You note that the action to free the vessels from the provisions of Section 506 of the 1936 Act was based on the condition, among others, that repayment to the Government of the unamortized construction-differential subsidy applicable to the reconstruction of the vessels be made in cash. In regard to this condition, you quote part of your letter of June 15, 1964, to the effect that if the cash received on the sale of the vessels was insufficient to pay the total amount due, Grace Line be permitted to give the Government interest-bearing notes for the balance due and that Grace Line would assign to the Maritime Administration a primary position upon any first-preferred mortgages placed on the vessels. In line with such proposal you request an opportunity to review with the Maritime Administration the actual terms of repayment of construction subsidy at a later date.

You are advised that consideration was given to the repayment proposal as outlined in your letter of June 15, 1964. However, the 1936 Act apparently did not contemplate the acceptance of notes in favor of the Govern-

ment in a transaction of this nature involving the financing of a vessel for operation in the domestic trade of the United States.

Sincerely yours,

/s/ James S. Dawson, Jr.
JAMES S. DAWSON, JR.
Secretary

cc: 101 115 200 240 300 400 430 539 600 601 630
640 800 10002 Mr. E. Russell Ints—Wash., D.C.

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF EDMOND J. FITZGERALD

DISTRICT OF COLUMBIA ss.:

EDMOND J. FITZGERALD being duly sworn, deposes and says that:

1. My name is Edmond J. Fitzgerald and I am employed by the Maritime Administration, an agency within the United States Department of Commerce. My present official title is Acting Director, Office of Ship Financing Guarantees, which office I have held since August 16, 1977. My official, ongoing position is Supervisory Examiner, Ship Financing Guarantees. From August 1973 to August 1977, I was Assistant Division Chief, Division of Ship Financing Guarantees. Prior to assuming those duties, I was a Senior Examiner, Ship Financing Guarantees in the same Division from June 1971 to August 1973. From August 1969 to June 1971, I was a Senior Financial Analyst with Xerox Corporation. From October 1966 to August 1969, I was a Senior Financial Analyst with the Ford Motor Company. From April 1964 to October 1966 I was a Mortgage Insurance Examiner in the Division of Mortgage Insurance Contracts of the Maritime Administration. From December 1960 to April 1964 I was a Marine Insurance Examiner with the Maritime Administration's Division of Marine Insurance.

2. At my direction, and under my personal guidance, trained and experienced professional staff in the Office of Ship Financing Guarantees have analyzed the potential

cash flow differential of financing the payback of construction-differential subsidy (CDS), using the present note arrangement compared with the cash flow impact of financing the CDS payback utilizing Title XI guaranteed financing pursuant to Section 1104(a)(3) of the Merchant Marine Act, 1936, as amended.

3. If on September 30, 1977, Title XI bonds had been issued for the STUYVESANT on the $27,200,000 construction-differential subsidy repaid, it was my opinion that an interest rate of 8.05% could have been obtained. Including the Title XI guarantee fee of 3/4 of 1%, the total rate would have been 8.80%. On a level debt service basis this would result in annual payments of principal and interest amounting to approximately $2,914,700 (rounded to the nearest hundred). This figure was arrived at by interpolating between 8.75% rate and 8.875% rate on an interest table. The annual payments of principal and interest actually achieved on the construction-differential subsidy note repayment amount [sic] to $2,738,300 (rounded to the nearest hundred). The difference between these two payments is only $176,400 per year. About $155,655 of this difference would represent the ¾ of 1% statutory fee by the Maritime Administration for the grant of Title XI financing. The remainder of $20,745 would insignificantly affect the competitive posture of the plaintiffs.

/s/ Edmond J. Fitzgerald
EDMOND J. FITZGERALD

Subscribed to before me this 18th day of October 1977.

/s/ Joan A. Bryan
Notary Public

My Commission expires: July 31, 1979

[SEAL]

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

SUPPLEMENTAL AFFIDAVIT OF RUSSELL F. STRYKER

DISTRICT OF COLUMBIA) ss.:

RUSSELL F. Stryker being duly sworn, deposes and says that:

1. My name is Russell F. Stryker and I previously executed an affidavit on September 28, 1977, for use in connection with these consolidated actions. Since that date the plaintiffs, both in filings and oral argument before the Court, have disputed the contents of my earlier affidavit. Particular attention has been given to Appendix D of Shell Oil Company's Motion for Summary Judgment comprised of an affidavit of Charles E. Dunagan, and its accompanying Tab B, "a Federal Energy Administration study entitled 'Equitable Sharing of North Slope Crude Oil,'" and Tab C, entitled "President's April 15, 1977 Report to Congress on the Pricing of Alaska North Slope (ANS) Crude Oil." The purpose of this supplemental affidavit is to reassert the conclusions of my original affidavit with respect to: Trans-Alaskan Pipeline System (TAPS) throughput volume; amount of TAPS oil to be delivered to ports on the Pacific Coast of the United States; and the shipping capacity needed to

transport the TAPS oil both to ports on the Pacific Coast of the United States and to the Republic of Panama or offshore the Republic of Panama for transshipment through the Panama Canal primarily to ports on the Gulf Coast of the United States.

2. Shell Oil Company in the affidavit of Charles E. Dunagan and other documents presents the view that the supply of domestic tankers available for the transportation of Alaskan North Slope (ANS) crude to the West Coast and particularly Panama, equals demand. Plaintiffs contest the magnitude of the Maritime Administration's currently determined deficits.

3. The Maritime Administration very recently has assessed the tanker transportation needs and concluded that *less* domestic fleet tonnage is available for the transportation of crude from Alaska to Panama than is required. The deficit has been determined to be about five hundred thousand deadweight tons (500,000 DWT), as explained in my previous affidavit. An earlier assessment by the Maritime Administration (October 21, 1976) referred to by plaintiffs, and based on data available a year ago, also indicated a domestic fleet deficit but it was thought to be in the neighborhood of 280,000 DWT shortfall (See table on page vii). Based upon both the previous and current estimates there is a need to supplement the non-subsidized domestic fleet with vessels from the foreign trade fleet built with construction differential subsidy (CDS). The STUYVESANT, a vessel built with CDS, is needed for the transportation of ANS crude to Panama.

4. In reviewing the bases for the Maritime Administration estimate, several factors must be kept in mind.

(a) All of the ANS crude cannot be sold to refinery operators on the West Coast of the United States. This is true because:

—ANS crude is relatively high in sulfur content.

—It has a relatively higher volume of low value product after refining and a consequent low volume of high value product such as gasoline.

—The existing refinery equipment on the West Coast must be modified at high cost if ANS crude is to be refined in large quantities.

—Because of these characteristics of ANS crude, the most likely oil to be displaced is light oil from the Persian Gulf.

—It is estimated (President's Report, page 22) that ANS crude must be priced 10 to 40 cents, for an average of 20 cents, a barrel less than Persian Gulf light to be competitive. Persian Gulf light is now selling for $13.50 a barrel. Sohio/BP, the major vendor, is selling ANS crude for $13.30 to $13.40, an average difference of 15 cents a barrel. (Petroleum International Weekly, August 15, 1977, page 2.)

(b) The earlier Federal Energy Administration forecast of sales (Dunagan affidavit, page 4) based sales estimates on maximum alteration of refinery equipment *and* a 25 cent difference in price. For these reasons high ANS West Coast sales were forecast at that time by the Federal Energy Administration (FEA). Based on current price and sales information, the Maritime Administration concludes that less will be sold.

(c) Oil not sold on the West Coast must be shipped from Alaska to Panama and from there transshipped to the Gulf and East Coasts.

(d) A lower estimate of West Coast sales results in an increased shipping requirement.

(e) The reduction in forecasted West Coast sales based upon the current price situation is the foundation

for the Maritime Administration conclusion that more oil must be shipped to Panama and, therefore, that more ships are needed.

(f) This view of West Coast sales potential is not solely held by the Maritime Administration, as shown on page 1 of the testimony attached to this affidavit. Before the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, House of Representatives, September 30, 1977, Federal Energy Administrator O'Leary indicated that only 600,000 to 700,000 barrels a day of ANS crude will be sold to West Coast refiners. This is substantially lower than the earlier FEA estimate of 850,000 to 950,000 barrels per day made in April of 1977. Employing the pipeline delivery value for the third quarter of 1978 (1,350,000 barrels a day) used by the Maritime Administration in my previous affidavit, and the current FEA *high* estimate of West Coast sales at 700,000, the transportation requirement to Panama is 650,000 barrels a day. This is very close to the Maritime Administration figure of 675,000 barrels a day in my previous affidavit. The FEA low estimate produces a transportation requirement of 750,000 barrels a day, which is substantially in excess of the Maritime Administration estimate.

(g) Federal Energy Administrator O'Leary's estimate of 1.2 million barrels rate is for March 1978 appears on the same page in his statement. My previous affidavit set a rate of 1.35 million barrels, but I specified the third quarter of 1978. It is my considered opinion that the rate will be at or about the latter figure for the later third quarter of 1978.

5. Considering the changing nature of the marketing situation and delivery rates of ANS crude, it is unrealistic to cling to dated forecasts, either twelve or six months old, after new data has become available. The Maritime Administration, in the interest of employing the most realistic assessment of shipping requirements, has made prudent adjustments in the forecasting variables used. The new values used by Federal Energy Administrator O'Leary indicate that that agency, too, has revised its forecasts based upon newly available data.

/s/ Russell F. Stryker
RUSSELL F. STRYKER

Subscribed to before me this 18th day of October 1977.

/s/ Joan A. Bryan
Notary Public

My Commission Expires:

July 31, 1979

[SEAL]

TESTIMONY OF

JOHN F. O'LEARY
ADMINISTRATOR
FEDERAL ENERGY ADMINISTRATION

Before the

SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

in

Washington, D.C.

September 30, 1977

Mr. Chairman and members of the Subcommittee:

I am pleased to appear before this Subcommittee on the last occasion on which I will testify as Administrator of the Federal Energy Administration. As of tomorrow, the functions of the FEA will be assumed by the Department of Energy, and the views I express today will be those of the Department.

I understand that you would like me to provide our views generally on H.R. 9203 and other proposed legislation that would expedite the approval and construction of west-to-east crude oil transportation systems, and to focus particularly on the impact of such legislation on the Sohio Project.

As you know, the Trans-Alaska Pipeline is currently delivering oil to Valdez, Alaska at the rate of about 700,000 barrels per day (B/D). By March of next year,

with the completion of repairs to the pump station which was destroyed by fire, that rate should increase to 1.2 million barrels a day. We expect that 600,000-700,000 B/D of this volume will be absorbed by refiners on the West Coast, and that the remainder will be transshipped through the Panama Canal to Gulf Coast refiners until an overland transportation system can be built to move Alaskan oil directly from the West Coast to other regions of the country.

The Administration firmly believes that the construction of at least one, and perhaps two, of the proposed west-to-east pipeline systems is urgently needed in order to assure an efficient and economic means of delivering Alaskan crude oil to those areas of the country which need it. While transshipment of North Slope crude oil through the Panama Canal is an acceptable short-term alternative, it is neither as economic nor as efficient, from the standpoint of both producers and consumers, as an overland pipeline system from the West Coast.

In addition to the potential cost savings, there are other reasons why expeditious completion of one or more west-to-east pipeline systems should be a matter of high national priority. As you know, the northern section of the country faces potential crude oil shortages as Canadian imports are terminated and indigenuous production declines. A pipeline from the West Coast to that region will not only transport surplus Alaskan crude but will provide the northern States with access to numerous other sources of crude oil that are necessary to operate their refineries efficiently. A southern pipeline would, in addition to moving the Alaskan surplus, open up new markets to California producers, including the U.S. Government at the Elk Hills Naval Petroleum Reserve. And, perhaps most importantly, it is becoming increasingly apparent that one or more pipelines from the West Coast could be an important predicate to further development

of our vast oil reserves on the North Slope and in the Pacific Ocean. Thus, a west-to-east pipeline system could contribute materially to lessening our dangerous dependence on foreign oil and our persistent balance of payments deficits.

While the Administration is firmly committed to the proposition that the expeditious construction of pipeline systems from the West Coast is essential, it is important to recognize that under existing legislation the Federal Government has very limited and fragmented authority in this area. No general siting authority for petroleum pipelines exists. Instead, a variety of laws that [sic] assign to separate agencies jurisdiction over such diverse matters as pipeline safety, air and water quality, and rights-of-way over public lands. In addition, the States in which pipeline facilities would be located regulate to varying degrees the siting and other aspects of the pipeline and terminal facilities. But in all this myriad of Federal and State involvement, there is no means provided for a comparison of the relative merits of competing applications from the standpoint of their ability to meet national energy objectives. And there is no means provided legislatively to coordinate the decision-making process so as to minimize conflict and unnecessary delay.

Recognizing the resulting complexity of the Federal and State permitting processes for the west-to-east pipeline projects, and in the absence of any formal means of coordination, the Administration determined early this year that a single Federal Project Coordinator should be designated, and Mr. Douglas Robinson, who is with me today, was appointed to that position. Since March of this year, Mr. Robinson has been working informally with the appropriate State and Federal agencies to coordinate and expedite their approval processes.

These informal efforts have been successful in eliminating some unnecessary delays, particularly with respect

to the Sohio Project. But our efforts in this regard, as well as our successful experience in applying the procedures of the Alaskan Natural Gas Transportation Act to arrive at a decision on an Alaska gas transportation system, have brought us increasingly to the view that a legislative framework for a decision on west-to-east oil pipeline routes would provide certain advantages over our present informal coordinating efforts and is therefore in the public interest.

For example, without some form of Federal designation of the route or routes that are most in the national interest, the chances are increased that none of the current proposals would receive all of the necessary regulatory approvals, particularly at the State level. While many State officials recognize their responsibilities to the rest of the country, they may in the end find it politically impossible to approve a particular oil terminal and pipeline project in the absence of a Federal Government determination that such project best serves the national interest. Similarly, it is possible that Canada would not approve transshipment of oil through it without an indication from the U.S. Government that we have determined such transshipment to be necessary.

Even if the States or the Canadian government would eventually approve a pipeline project, Federal route designation could expedite their decisions, by eliminating the need to consider potential alternatives and allowing them to focus all of their attention on the Federally-designated routes. It could also help to expedite approval and construction of a pipeline by requiring coordination between Federal and State decision-making processes and eliminating the potential for unnecessarily protracted litigation.

Federal designation of a route or routes might also assure a more rational and orderly decision than might otherwise occur. As I have indicated, many agencies

are now involved in the permitting process, but none compares the projects on a national interest basis by examining their relative costs or their comparative ability to supply markets where crude oil is needed. Special legislation could establish criteria for the decision which would in effect require this comparative analysis.

H.R. 9203 contains many of the essential elements that we believe should be included in expediting legislation. It is a substantial improvement over S. 1868, H.R. 8568 and H.S. 8627, all of which we believe did not provide enough time and latitude to consider all of the options that are available and to consider and attempt to mitigate the potential adverse impacts on the environment. There are, however, a few areas to which the Subcommittee might give further consideration.

First, neither H.R. 9203 nor any of the other bills contains a mechanism for coordinating State and Federal decisions. We do not understand that any of these bills preempts the existing authority of the States to review and approve these projects under the legitimate exercise of State police powers, and we agree that such preemption is not necessary or appropriate at this time. However, we believe it is possible and desirable to provide a mechanism for Federal-State consultation and coordination that would minimize the potential for conflicting decisions and duplication of effort.

Second, H.R. 9203 provides for no formal contribution to the decision-making process from any Federal agency other than the Departments of Energy and Interior and is confusing as to how the overall decision relates to the issuance of specific permits. Our experience with the Alaska natural gas decision has shown that there are a number of Federal agencies with expertise on particular aspects of pipeline and terminal siting whose views would be valuable and even critical in arriving at a decision. Without such mandatory coordination among

Federal officials particularly, there is the possibility that the Secretary's decision could inadvertently conflict with the requirements of a statute administered by another agency, such as EPA, the Department of Transportation, or the Department of Justice. In addition to providing a consultation procedure, we also think it is necessary to refine the mechanism for coordinating the Secretary's designation of a project with the issuance of specific permits by other agencies. We would therefore recommend that provisions similar to Sections 6 and 9 of the Alaska Natural Gas Transportation Act be included.

Third, we do believe that consideration should be given to the question of whether the Secretary of Energy, rather than the Secretary of the Interior, would be in a better position to assess all of the policy considerations which must be included in the decision, especially since two of the three northern proposals do not include any Federal lands or issues within the usual jurisdiction of the Secretary of the Interior. For those who are concerned that the Secretary of Energy would not give adequate consideration to environmental matters, a possible solution is to give the Secretary of Energy final decision authority but limit his discretion to those routes which have been certified by the Secretary of the Interior as being environmentally acceptable and consistent with proper management of the public lands.

Fourth, with regard to the date for a decision on the northern projects, we believe that the October 15, 1978 deadline contained in H.R. 9203 is more realistic than the February 1, 1978 deadline contained in the other bills under consideration. We still have two concerns about the later date, however. The first is whether the Environmental Impact Statement process can be completed by then, particularly in view of the fact that the Department of the Interior's current schedule calls for the completion of the EIS on the Northern Tier project

in April 1979. We will defer to the Interior Department on whether it can complete its statutory requirements by that date. We believe it should be possible for the other criteria for a decision to be analyzed by that time. Also with respect to the EIS process, since the judicial review provisions apparently prevent challenges to the adequacy of the EIS, consideration might be given to requiring approval of it by the Council on Environmental Quality, much like was done in Section 6(d) of the Alaska Natural Gas Transportation Act.

Our second concern about the decision date has to do with the scheduling of the Canadian approval process and the need to coordinate the U.S. and Canadian decisions. Although the Canadian and U.S. decisions must be made independently, because of the different concerns the two countries have with respect to these projects, we believe it would be appropriate for the U.S. deadline to be as close as possible to the time when the Canadian Government will be making its decision with respect to the routes which would cross Canadian territory. Perhaps a procedure like that contained in the Alaskan Natural Gas Transportation Act, where the President was allowed to delay the decision for 90 days under certain conditions, such as the need to improve the EIS or to coordinate with a Canadian decision, might be considered.

Finally, given the present status of the Sohio Project, we do not believe it is necessary or advisable to include that project within the scope of the legislation, except with respect to the limitations on judicial review. We share the view of the sponsors of H.R. 9203 that the Sohio Project is generally not in competition with the northern projects, and final Federal approval of the Sohio Project therefore does not need to take into account the relative merits of the other projects. In addition to not being necessary, we are concerned that an overall

Federal decision on the Sohio Project would in fact delay its ultimate approval. The Federal Power Commission decision with respect to the abandonment of an El Paso natural gas pipeline for use in the Sohio Project is now expected to be issued on October 12. The Department of the Interior will issue a decision on rights-of-way within a few days thereafter, and the EPA decision on an air quality permit has been carefully coordinated with the State of California's similar procedures for considering the air quality issues. After months of delicate negotiation, a schedule for completion of Federal and State decisions on the project by about December 28 of this year was arrived at during a meeting in Los Angeles this past Tuesday between the Federal Coordinator, Sohio and the various State agencies involved. We think any further Federal intrusion into this process would only unnecessarily complicate matters.

This is an appropriate point at which to turn to a discussion of the major issues and current status of the Sohio Project.

As you may know, any new stationary source of emissions in California must comply with separate Federal and State air quality requirements. That is because the EPA has not yet approved California's implementation plan for new source review and has therefore not yet delegated to the State its authority under the Federal Clean Air Act. In the absence of such delegation, Federal and State air quality regulation exists side by side in California.

Sohio has proposed to locate its terminal in what is termed under both Federal and State law a "non-attainment" area—that is, an area that does not meet minimum Federal and State ambient air quality standards for certain pollutants that have been identified as hazards to health. The Federal and State standards for

oxidants, caused by the reaction of hydrocarbons and nitrogen oxides with sunlight, are exceeded on two out of three days in the South Coast Air Basin. Federal and State standards for particulates are also commonly exceeded, as are the State standards for sulphur dioxide. These four pollutants—hydrocarbons, nitrogen oxides, particulates and sulphur dioxide—would be emitted in significant quantities from the proposed Sohio terminal at Long Beach and related operations.

Both Federal and State law provides that if emissions of regulated pollutants from a new stationary source in a non-attainment area cannot be eliminated by applying controls to the source, they must be offset by reducing at least an equivalent volume of emissions from other sources in the same geographical region. The reductions can be accomplished either by eliminating a source of emissions altogether or by applying control measures to them. The so-called "tradeoff" must consist of a reduction in existing emissions at the tradeoff site to a level below what could otherwise be legally emitted at that site.

Thus, in order for Sohio to obtain an air quality permit from both EPA and the State, it must reduce the emissions from its project as much as possible, then ascertain the amount of the emissions that will remain, despite its best efforts to reduce them, and, finally, provide appropriate offsets of those remaining emissions.

After many long months of negotiation, Sohio and the Federal, State and local air quality agencies have reached a common understanding of the measures that will be taken to reduce emissions from the project and the amount of the emissions that will need to be offset. There is also general agreement on how they will be offset. What remains to be done is for Sohio to work out the details of a tradeoff package with third parties at a cost that is acceptable, and for the Federal and State agencies

to complete the procedural process, including the preparation of a supplement to the State's Environmental Impact Report in order to assure its compliance with State law. There are no major substantive issues left to be resolved. It would still be premature to state categorically that Sohio will receive the necessary air quality permits, but it is at least apparent that all parties are working diligently and in good faith to accomplish that result.

If the tradeoff arrangement that has been generally agreed to can be formalized, the Sohio Project will not contribute to the deterioration of air quality in the Los Angeles basin. On the contrary, it will result in some net improvement even on days when it is in a high operational mode and a substantial improvement on average days. It would also provide a unique opportunity to demonstrate and improve upon frontier technology for the removal of sulphur and nitrogen oxides.

A second issue which, until recently, appeared to present a major obstacle to California's approval of the Sohio Project was whether the abandonment of the El Paso gas line would jeopardize the State's ability to receive potential natural gas supplies from the Southwest. This issue became particularly important over the past four months, after the FPC recommended to the President that Alaskan gas be delivered to California by displacement from the Permian Basin and the Mexican government announced plans to sell as much of 440 million cubic feet a day of natural gas to companies that would deliver it to California and other Southwestern States. The State argued that these sources, plus others that might become available, would place a severe strain on the post-abandonment pipeline capacity from the Southwest.

This issue was effectively eliminated as a barrier to approval of the Sohio Project by the President's decision

on an Alaskan natural gas transportation system. That decision, if approved by the Congress, would provide for the construction of a Western leg that would deliver Alaskan gas directly to California, rather than by displacement. Since the announcement of the President's decision, the California Public Utilities Commission has indicated that it will not pursue its objections to the abandonment of the El Paso line on the ground that it would deprive California of needed capacity. The coordination of the President's Western Leg decision with the Sohio Project was deliberate and came about as the result of intensive consultation between State officials and the Federal Project Coordinator in an effort to reach a mutually satisfactory result.

Thus, we consider the Sohio Project finally to be on track and within reach of final approval by the necessary Federal, State and local agencies. There is still much detailed work to be done. But, as the result of a gradual realization on all levels that the project would fulfill important national energy objectives and that appropriate measures can be taken to minimize potential adverse impact on the environment, the final pieces of the regulatory puzzle are beginning to fall into place.

In summary, I assure you that we in the Department of Energy share your interest in expediting the construction of west-to-east pipeline systems and have been working diligently to that end. We also support the concept of legislation that would allow for a coordinated State and Federal decision-making process.

Mr. Chairman, in view of the short notice we have had of this hearing, we have not had the opportunity to draft specific amendments to H.R. 9203 that would incorporate our suggestions. Mr. Robinson's staff is working on such amendments, however, and perhaps he will be in a position to submit them to the Subcommittee by the time hearings on this subject reconvene next Thursday.

With the modifications we intend to offer, we feel H.R. 9203 could be the proper vehicle for accomplishing the expeditious construction of one or more west-to-east pipeline systems. We look forward to the opportunity to work closely with the Subcommittee and its staff to draft a final bill.

Thank you. I would be happy to answer any of your questions.

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AMENDMENT TO COMPLAINT

Pursuant to Rule 13(a) of the Federal Rules of Civil Procedure, Plaintiff Shell Oil Company hereby amends the Complaint in Civil Action No. 77-1645 by adding the following new paragraph, to be numbered paragraph "33", and by renumbering existing paragraphs "33", "34", and "36" as "34", "33", and "36", respectively:

"33. The MSB decision to waive CDS restrictions on the STUYVESANT and the failure of the Secretary to reverse the MSB decision were not based on the administrative proceedings initiated on July 8, 1977 and August 23, 1977. Both actions were contemplated and shown to defendants and in fact were determined upon by defendants before July 8, 1977. The proceedings are therefore not bona fide and the actions are arbitrary and capricious in violation of Section 10 of the Administrative Procedure Act, 5 U.S.C. § 706, and Section 506 of the Merchant Marine Act of 1936, as amended, 46 U.S.C. § 1156."

Respectfully submitted,

/s/ Stephen N. Shulman
STEPHEN N. SHULMAN

/s/ Joseph A. Artacane
JOSEPH A. ARTACANE

/s/ Mark C. Ellenberg
MARK C. ELLENBERG

CADWALADER, WICKERSHAM & TAFT
Eleven Dupont Circle
Washington, D.C. 20036
202—387-8100

[Certificate of Service Omitted in Printing]

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AFFIDAVIT OF WILLIAM KARAS

I am William Karas, a member of the firm of Galland, Kharasch, Calkins & Short representing plaintiffs Alaska Bulk Carirers and Trinidad Corporation in this case. I make this affidavit with respect to the following matters based on my personal knowledge of the facts stated.

1. The following documents, attached hereto under seal have been provided to plaintiffs pursuant to their requests for documents and have been designated by defendants as protected documents pursuant to the protective order of October 7, 1977:

ATTACHMENT 1: Letter of November 3, 1970 from Robert J. Blackwell, Deputy Maritime Administrator to Hudson Drake, Deputy Under Secretary of Commerce.

ATTACHMENT 2: Undated memo of M.E. Parr, Chief, Office of Subsidy Administration.

ATTACHMENT 3: Abstract of Secretarial Correspondence and Attachment 1.

ATTACHMENT 4: Legal Opinion of Elmer E. Metz, Assistant General Counsel of the Maritime Administration dated December 17, 1952.

2. The excised portion of the first full paragraph of page 17 of Plaintiffs' reply Memorandum reads as follows:

> ". . . Information being developed through discovery indicates that the decision to make the STUYVESANT eligible for entry into the Alaskan trade was made long before the application of August 26 and the letters of August 31, 1977. Thus the facts as they existed in August, 1977 were not the decisive considerations leading to MarAd's action, and MarAd's refusal to have any procedures whereby it might consider the effects of its action on Plaintiffs because it had determined to make the STUYVESANT eligible for that trade long before. Further, evidence uncovered in discovery indicates there were improper contacts and influence in violation in connection with the eligibility of the STUYVESANT for the Alaskan oil trade—contacts which violate MarAd's own regulations. 46 C.F.R. § 201.182."

/s/ William Karas
WILLIAM KARAS

Signed and sworn to before me this 20th day of October, 1977

/s/ Marilyn M. Chu
(Notary Public)

My Commission expires: April 30, 1982

ATTACHMENT 1

DEPARTMENT OF COMMERCE
ABSTRACT OF SECRETARIAL CORRESPONDENCE

TO: [X] The Secretary [ ] The Under Secretary

From: Assistant Secretary of Maritime Affairs

Subject: Seatrain Shipbuilding Corporation

This memorandum supplements my memorandum to you dated April 1, 1975 regarding the above-captioned subject to provide, per your request, additional details regarding current developments and an estimated time frame applicable to the 225,000 deadweight ton tankers under construction at the Seatrain shipyard.

Potential Purchasers or Charterers of the Seatrain Ships

The Seatrain management has had and is continuing to have extensive discussions with several of the major oil companies, including Standard Oil Company of Ohio (Sohio), Atlantic Richfield Corporation (Arco) and Exxon Company, USA (Exxon), regarding the purchase or charter of the two Seatrain VLCC's under construction for use in the Alaska oil trade. In addition, we have discussed this matter with representatives of the Marine Department of Sohio during the period of the past few weeks. Although Sohio had generally agreed with our determination of the value of the Seatrain vessels as at least equivalent to the capitalized cost of $84 million for each of the six vessels they have contracted for with Avondale Shipyard based on comparative transportation costs, they have not to date given any firm indication of their interest in purchasing or chartering the Seatrain ships. In this connection we believe it is pertinent that

three of the ships which Sohio contracted for with Avondale are cancellable without penalty if cancelled by specified dates—the last two by December 31, 1975 and the fourth ship by June 30, 1975. Under such circumstances, there is no urgency on the part of Sohio to make a prompt decision on this matter.

Joe Kahn of Seatrain advises us that the major oil companies that he has been dealing with have all expressed interest in the two ships, but that he has not yet been able to obtain any definite commitment for purchase or charter. Because of the fact that the Alaskan oil will not start to move until the latter part of 1977, it is questionable that the oil companies will enter into any final arrangements for these vessels at this time.

Control No. ————

SURNAME AND
ORGANIZATION

(*Typed*)

RJBlackwell
A/S for MA

INITIALS AND

DATE

[SEAL]

Washington, D.C. 20530

QM1967/L13-3:521
QM1969/L13-3:521

Date: Nov. 3, 1970

Reply to
Attn of: Deputy Maritime Administrator

Subject: SEATRAIN SHIPBUILDING CORPORATION (Seatrain)—Construction Differential Subsidy (CDS) for 230,000 DWT Tankers

To: Mr. Hudson Drake
Deputy Under Secretary of Commerce

Reference is made to your request for our views with respect to granting CDS for Seatrain's proposed 230,000 DWT tankers which are to be built at the Seatrain Shipbuilding Corp. (former Brooklyn Navy Yard).

Background Information

Seatrain, by applications dated May 19, and June 12, 1969, as amended, requested Title XI loan and mortgage insurance on two 230,000 DWT tankers on behalf of two wholly-owned subsidiaries—Langfitt Shipping Corp. (Langfitt) and McRae Shipping Corp. (McRae). The vessels are proposed to be used in the oil trade from Valdez, Alaska, the southern terminus of the proposed Trans-Alaska pipeline to U.S. West Coast ports. On December 29, 1969 the Maritime Administrator made certain findings with respect to these applications which in effect conditionally approved mortgage insurance and denied construction loan insurance on the two vessels. It was anticipated at that time that Langfitt and McRae

would enter into formal Mortgage Commitments on the vessels so as to definitely commit Maritime for insurance of the mortgages, thereby providing them the opportunity to obtain private construction loans. To date, Langfitt and McRae have not made any effort to secure formal Mortgage Commitments from Maritime even though the ships are apparently now under construction at Seatrain's yard. Marad is prepared to formalize its commitments to insure mortgages on these vessels as soon as the applications are completed.

Seatrain, by applications dated June 11, 1970, as amended, requested CDS for two identical 230,000 DWT tankers on behalf of two other wholly-owned subsidiaries —Hase Shipping Corp. (Hase) and Haan Shipping Corp. (Haan). According to the applications these two vessels are for operation in the U.S. foreign trade.

Subsequent to the filing of the applications the principals of Seatrain have indicated that they desire to obtain CDS on the first two tankers to be built at the Seatrain shipyard rather than on the third and fourth vessels as set forth in their formal applications.

Apparently the reason for the "switch" is the delay in the approval for the construction of the Trans-Alaska pipeline. Assuming the pipeline is built, most people feel that completion would not be before 1974-5 and that its capacity would not be reached until several years later. Hence, if the first two vessels were delivered on schedule in 1972 and 1973, there would be no profitable domestic employment for these vessels for at least several years. As a condition to the Title XI mortgage commitment Seatrain is required to bareboat charter the ships for the first three years.

Seatrain would prefer to receive Government construction funds to aid in the building cost of the first two vessels as they believe that these vessels can operate successfully in the U.S. foreign trade with CDS. We further understand that Seatrain may, at a later date, wish to repay a portion of the CDS so that these vessels could also operate in the domestic trade.

Maritime's Views on CDS for 230,000 DWT Tankers Built at the Seatrain Shipbuilding Corp.

We have reviewed Seatrain's various applications which were submitted on behalf of their wholly-owned subsidiaries as well as the Seatrain shipyard itself. As a result of this review, Maritime is *not* in favor of granting CDS for the first two vessels which are to be built at the Seatrain yard for the following reasons:

I. *Budgetary Considerations*:

The Cost of two vessels is estimated by Seatrain at $94,-500,000, plus escalation, and in their application Seatrain requested CDS for 50% of the construction cost or $47,250,000. Under the provisions of the new maritime legislation the guide-line percentages for CDS are 45% of an approved negotiated price for contracts awarded in fiscal year 1971 and 43% if contracted for in fiscal year 1972. Accordingly, the CDS funds involved for these two vessels would be in the range of $40,000,000 to $42,-500,000, plus escalation, depending on the year in which the contract was awarded.

Marad's fiscal year 1971 budget for CDS is approximately $199,000,000 and for fiscal year 1972 the requested budget level is about $230,000,000. The 1971 budget contemplates commitments for 27 new vessels on a multi-year procurement basis, of which the Government's share of the cost of 19 vessels would be funded in FY 1971 and the remaining 8 vessels funded from CDS appropriations of a subsequent year. This will be the first year of the President's new Maritime Program which calls for the building of 300 new merchant ships over the next

10 years at the rate of 30 ships per year. The commitment for construction of only 27 ships in FY 1971 and funding only 19 of these ships is considerably below the program level, but was mandated by the current Government fiscal restraints. For FY 1972, the projected CDS budget of approximately $230,000,000 will provide for negotiating for construction of 30 merchant vessels on a multi-year procurement basis but funds for only about 22 vessels.

As is readily apparent from the foregoing, award of CDS to aid in the construction of two Seatrain giant tankers at upwards of $20,000,000 per ship in either of these fiscal years would further seriously impair the Government's goal as mandated in the President's new Maritime Program in terms of the number of ships to be built during the early stages of the new program.

II. *Variance From Criteria of New Shipbuilding Program*

The Seatrain 230,000 DWT tankers being considered herein do *not* meet the criteria considered most promising for the U.S. foreign trade in the 1970 to 1980 period. Based on Marad's CMX project (Merchant Ships for the 1970's), in which Newport News Shipbuilding Co., Bath Iron Works and Marad's staff participated, we are of the opinion that CDS funds should be spent on more versatile and productive ships—namely combination bulk oil and ore carriers (OBO), container vessels and barge carrying ships. Further, the largest practical tanker considered by the CMX project was 120,000 DWT.

In an effort to reduce the construction cost of vessels and improve construction procedures, Marad is encouraging "standardized" vessels. The demand for American tankers of this size in the U.S. foreign trade, as well as the domestic trade, is so limited (see Section on "Foreign Trade") that a production run of 10 to

20 tankers in the 230,000 DWT range seems most remote as compared to other type vessels competing for CDS funds. In the relatively unlikely event that a sufficient demand were to develop for tankers in the 230,000 DWT range, so as to justify the development of a standardized tanker for a production run, such standardized tanker would be wider than Seatrain's so as to permit a shallower and more suitable draft. The graving docks at the Seatrain yard are too narrow to permit Seatrain to build a wider ship—hence the dimensions of their graving docks dictated the maximum dimensions of their ship which are less than optimum.

It is noted that out of a total of some 132 vessels for which Marad has received expression of interest, only three operators—namely Marine Carriers Corp., U.S. Lines and Seatrain—have indicated interest in building tankers in excess of 120,000 DWT.

III. *National Defense Considerations*

The Department of the Navy, by letter dated 22 July 1969, in response to our request for their views on the desirability of large supertankers—such as the Seatrain vessels, stated that "the desirability and capability of tankers drawing over 40 feet and supertankers for direct military support are limited. Further their employment in direct military support during peacetime as 'mother ships' for fleet oilers and floating storage would not be cost effective."

The Navy's evaluation of the CMX 120,000 DWT design also revealed that such a vessel would have little or no value to DOD because it was too deep, too wide, too long and too large.

Vice Admiral Arthur Gralla, the head of the Military Sealift Command, told a Pentagon press conference during October 1970 that he would like to have available some medium sized tankers of 25,000 to 30,000 tons. New

Japanese tankers are 200,000 tons and one now under construction is 467,000 tons. Those tankers are just too huge, Gralla said, to get into many of the areas military vessels might have to enter.

IV. *Shipyard Considerations*

1. There are today ten established major shipyards in the United States engaged in Navy and/or large merchant ship construction (excluding the Seatrain yard). Based on Navy and Marad's evaluation of future U.S. shipyard capability, it is felt that, in view of the new Navy and Marad programs; approximately seven or eight of the ten yards could be gainfully employed in shipbuilding. It is estimated that three yards would be engaged in naval work, three in merchant vessels under the Marad 30 ship per year program and one or two yards engaged in the construction of other vessels such as coastwise tankers, etc. The other two or three yards which will probably not be engaged in shipbuilding will possibly turn to other related construction such as offshore oil rigs, large sub-assemblies, etc. Thus, it appears at this time that the national need for shipbuilding facilities in terms of numbers of shipyards may well be contracting and not expanding.

2. In view of the apparent diminishing need for additional shipyards, there is a serious question as to whether Marad should, through the payment of $40 or more million in CDS, contribute to the start-up and renovation of an unproven shipyard which, at least to date, is committed to building ships for its parent to the exclusion of others, or support going facilities of proven worth. It appears that CDS funds would more effectively benefit the U.S. shipyard capability if the funds were used to help modernize existing yards rather than to foster an additional yard which eventually may not be competitive.

3. The obstacles that Seatrain Shiypard must surmount before it can become a first class competitive shipyard are formidable. Some of the major problems are:

a. Developing a first class experienced and proven management team.

b. Hiring and training efficient production workers and line supervisors.

c. Developing and financing new and highly sophisticated construction systems with unskilled labor at a new shipyard. The new $100 million Litton yard, Ingalls West, is now going through this stage, experiencing delays of a year or more, extensive rework, high management and labor turnover and cost overruns.

d. Maintaining a degree of efficiency and/or a smooth "flow" of work while virtually building a new shipyard and two ships at the same time.

e. Financing possibly large cost overruns on both the shipyard and the ships.

4. Probably the most impelling consideration for Government assistance is the promise that jobs will be created for a large number of the hardcore unemployed and disadvantaged in the area adjacent to the shipyard. The degree to which this will eventually work out can only be conjectured. However, if the yard eventually fails to survive after we spend $40,000,000 in CDS funds, the net result can only be that these people will have some limited and specialized training and temporary employment. These people will not find ready employment in the New York area because the ship repair business is limited in size and their training will not make them readily eligible for the highly unionized building trades. On the other hand, if the $40,000,000 is spent in a shipyard with a high probability of survival, the investment

in training will have a more permanent effect. Since almost all shipyards are near depressed areas the benefiting shipyards will also be training the disadvantaged.

5. Due to the foregoing potential problems that Seatrain will undoubtedly encounter with inexperienced management, labor, yard renovation, etc., we have serious doubts that Seatrain can construct the vessels without serious delays, large cost overruns which Seatrain might not be able to absorb successfully, and the possibility of not completing the vessels. Title XI loan insurance was denied primarily for these same reasons.

6. Seatrain has partially justified the existence of its yard on the fact that no other shipyard in the United States could construct vessels of this size. This is not currently a true statement, since Bethlehem's Sparrows Point yard can build vessels up to 300,000 DWT in its new graving dock; Newport News has a similar capability, although this dock is usually not available for merchant ship construction; and Todds' San Pedro yard is currently building two ways which can readily be joined so as to handle the construction of the size vessels being considered herein.

V. *Foreign Trade Considerations*

On May 3 in Syria, the Trans Arabian Pipeline (Tapline) was knocked out of commission by an errant or deliberately aggressive bulldozer. The Syrian Government has not allowed its repair, preventing 500,000 barrels a day of Saudi Arabian crude from reaching the Mediterranean.

At the other end of the Mediterranean the Libyan Government cut back oil production by 15 per cent, or 500,000 barrels a day.

The loss of almost 1 million barrels a day of oil west of Suez and close to world markets has strained tanker

capacity. Replacement of this oil with production from the Persian Gulf around South Africa takes six to eight times the tanker capacity. As a result, spot charter rates have risen to their highest level since the 1956 Suez crisis and are more than 50 per cent higher than during the 1967 Arab-Israeli war. However, future foreign tanker rates cannot be based on today's inflated rates.

Since the proposed vessels will not be delivered until about 1972-3, we must look at what the tanker rates will be at that time. The most important factor which will offset market rates will be the introduction of a large number of supertankers into service at that time. Based on reports of shipbrokers of vessels under construction or on order there will be about 330 tankers *over 150,000 DWT* in service by 1974 in contrast to the relatively few in service today. In addition, the (1) restoration of Tapline, (2) the possible reopening of the Suez Canal, (3) increased production of Libyan oil and (4) new oil discoveries in the North Sea which are in the "backyard" of the principal European markets all tend to severely reduce tanker requirements with a resultant reduction in rates.

Seatrain's proposed vessels with a draft of 71 feet would be uneconomical carriers in the large Persian Gulf/Japan trade since they could not pass thru the Malacca Straits fully loaded thereby incurring a substantial economic disadvantage in competing with foreign flag tankers of comparable size having a maximum draft of 65 feet.

If Seatrain's vessels are used in the U.S. foreign commerce, there are presently no U.S. discharge ports that could accommodate them at full load draft. There is talk of building a deepwater facility in the entrance of the Delaware Bay, however, this facility has been nothing but talk for many years. There is apparently not sufficient economic justification for its construction with oil import quotas at their present levels.

VI. *Profit Considerations*

Based on Seatrain's own 1970 operating costs (Hase and Haan applications) their vessels would require approximately *\$3.49/DWT*/month without CDS subsidy and *\$2:15/DWT*/month with *50%* subsidy. The foregoing costs are based on first year interest costs rather than mid-life costs as shown in the applications. Additionally fuel and port costs were deleted as they are normally for charterer's account on long term charters.

Foreign charter fixtures for vessels to be delivered in the early 70's ranged from \$1.35/DWT/month to about \$1.55/DWT/month for 5 to 10-year charters as follows:

DWT	Delivery	Term	\$/DWT/month
225,000	1972	9-10 yrs.	1.55
202,000	9/71	10-yrs.	1.50
214,000	late 72	10 yrs.	1.45
263,000	early 72	5 yrs.	1.35

The foregoing rates were fixed prior to May and the present inflated rates. During October 1970, several vessels in this size range were fixed on 8 year charters at \$2.10/DWT/month. Some vessels were fixed for 3 year charters at higher rates; however, they are not indicative of long term rates. Seatrain itself recently chartered 3 vessels in the 128,000 to 151,000 DWT range for \$1.80 to \$1.90/DWT/month.

Based on Seatrain's minimum required rate of about \$2.15/DWT/month (50% subsidy), it appears they would not be able to compete profitably in the foreign trade for long term charters. They could possibly compete on short term spot charters, providing there is a constant "crisis" in the tanker market for the life of the vessels. If less than 50% subsidy is granted, their vessels would be even less competitive since their required rate would be between \$2.15 and \$3.49/DWT/month depending on amount of subsidy. At mid-life, Seatrain's required rates could decline to \$2.65/DWT/month

without subsidy and \$1.73/DWT/month with 50% subsidy as a result of a reduction in interest costs providing they could manage to keep the ships operating for the first 10 years at the higher rates.

VII. *Operation of CDS Ships in Domestic Trade*

In accordance with Section 506 of the Act, Marad may consent to the transfer of a vessel built with CDS to other trades (domestic) for periods not exceeding six months in any year with the partial repayment of subsidy. Therefore, the vessels could not operate exclusively in the domestic trade even with repayment of subsidy.

There is a possibility that if Seatrain sold the vessels and repaid subsidy, the ships could operate in the domestic trade under the new owners. Such was the case with the Grace-Sealand containerships, however, said case was an unforeseen necessity and not pre-arranged to circumvent the basic policies of the Act.

Conclusion

It is Marad's contention that it should not expend \$40 + million or about 20 to 25% of its limited CDS funds for Seatrain's 230,000 DWT tankers. Briefly, Marad believes that (1) its CDS funds would be more effectively used at this time for ship construction in modern and proven shipyards, (2) there is no national need for an additional shipyard, (3) large tankers for the foreign trade are lower in priority than OBO's, container vessels, and barge ships, (4) there is a serious question as to whether the Seatrain yard can build the vessels without incurring serious delays and large cost overruns, (5) the vessels will encounter operating problems at U.S. ports due to their excessive draft for a ship of this size, (6) the vessels would not be able to compete in the foreign trade during "normal" market periods, and (7) having little or no national defense value, the tankers

appear to fail the statutory requirement that they "be suitable for use by the United States for national defense or military purposes in time of war or national emergency."

We would be pleased to furnish any additional information that you may desire as the foregoing only covered the "high spots."

/s/ Robert J. Blackwell
ROBERT J. BLACKWELL
Deputy Maritime Administrator

ATTACHMENT 2

L13-3:521

Chief, Office of Subsidy Administration
SEATRAIN SHIPBUILDING CORPORATION (Seatrain)—Construction-Differential Subsidy (CDS) for two 230,000 DWT Tankers

Maritime Administrator

Seatrain, by memorandum to the Maritime Administrator dated November 3, 1970, submitted certain information to support their request for the grant of CDS to their wholly owned subsidiaries for the construction of 230,000 DWT tankers (Seatrain tankers). Seatrain attempted to establish (1) the national need for the Seatrain tankers, (2) the series production of the Seatrain tankers, (3) that the Seatrain tankers could be operated in either (a) the foreign trade, or (b) the domestic trade upon repayment of CDS, and (4) the competitiveness of the Seatrain tankers in the foreign trade.

We have briefly reviewed the carriage by sea of oil and dry bulk imports as well as the operation of the Seatrain tankers in the U.S. foreign commerce in order to determine the relative merits of using the limited CDS funds for the Seatrain tankers as opposed to other bulk type ships. Based on said review, we conclude that (1) due to the limited CDS funds available, the interests of the U.S. would better be served by the construction of either smaller tankers, dry bulk carriers or ore/bulk/oil (OBO) carriers for the foreign trade, (2) the Seatrain tankers without operating differential subsidy (ODS) would not be competitive in the foreign trade during a normal market, (3) the Seatrain tankers are not considered to be the optimum design for a standardized tanker, and (4) the introduction of *any* tanker built with CDS into the domestic trade would be inconsistent with the basic policies of the Act and present a serious economic problem

to existing domestic tankers. Said conclusions are based on the following considerations:

I. *Budgetary Considerations*

Based on Seatrain's Exhibit I of the subject memorandum, Seatrain anticipates a minimum subsidy of $21,-150,000 per ship (45% CDS rate) or $42,300,000 for two ships plus escallation [sic].

Marad's fiscal year 1971 budget for CDS is approximately $199,000,000 and for fiscal year 1972 the requested budget level is about $230,000,000. The 1971 budget contemplates commitments for 27 new vessels on a multi-year procurement basis, of which the Government's share of the cost of 19 vessels would be funded in FY 1971 and the remaining 8 vessels funded from CDS appropriations of a subsequent year. This will be the first year of the President's new Maritime Program which calls for the building of 300 new merchant ships over the next 10 years at the rate of 30 ships per year. The commitment for construction of only 27 ships in FY 1971 and funding only 19 of these ships is considerably below the program level, but was mandated by the current Government fiscal restraints. For FY 1972, the projected CDS budget of approximately $230,000,000 will provide for construction of 30 merchant vessels on a multi-year procurement basis but funds for only about 22 vessels.

If two Seatrain tankers were granted CDS in fiscal year 1971, they would consume approximately 20% of the available CDS funds thereby further impairing the Government's goal of building 30 ships per year pursuant to the President's new Maritime Program. Therefore it is imperative that we determine whether there is an impelling national need for these vessels now and if there is such a need, that they are of the best and most suitable design.

II. *Vessel Priority Considerations*

The following is a brief review of our current national dependency on oil imports as compared to our dependency on other dry bulk commodities in order to determine whether the Seatrain tankers are the size and/or type of vessels for the carriage of our imports of liquid and/or dry bulk cargoes.

Oil Imports (Liquid Bulk)

During calendar year 1969, the total U.S. oil requirements amounted to almost 14 million barrels of oil per day (BPD). Domestic sources supplied about 77.3% of such oil requirement and imports about 22.7% or about 3.2 million BPD. Nearly one half (1.4 million BPD) of the imports were crude oil and the other half were refined oils—primarily low grade residual fuel for heating purposes.

Crude oil imports represent about 10.1% of our *total oil requirements.* Approximately 4% of such requirement was supplied by pipeline from Canada, 2.8% from the Mid East/Africa area, 2.7% from South America—primarily Venezuela, and 0.6% from Indonesia.

Refined oil imports represent about 12.6% of our *total oil requirements.* Approximately 72% of such imports were residual fuel oils moving from the Caribbean area to the U.S. East Coast. The balance of such imports consist of gasoline, kerosene, etc. from refineries in Puerto Rico, the Virgin Islands, etc.

The Seatrain tanker, with its 70 foot draft would not be suitable for the carriage of crude oil from the relatively shallow South American ports nor would it be suited for the carriage of the bulk of the residual oils from the relatively shallow Caribbean ports due to draft and shore storage restrictions in the U.S. The only U.S.

foreign trade it could practicably be utilized in is the trade between the U.S. East Coast and the Mid-East or African areas providing an adequate discharge port in Canada or other area can be utilized to lighten the vessel.

Dry Bulk Imports

The United States is heavily dependent on the importation of certain essential raw materials for its very existence. Unlike oil, some of these essential materials are not even produced or found in the U.S., hence, we are totally dependent on importing them from other countries —primarily on foreign flag ships.

The following list shows our degree of dependency on imports of essential raw materials.

Dry Bulk Imports *

Material	% Imported	Material	% Imported
Antimony	95%	Lead	55%
Asbestos	86	Manganese	98
Bauxite	87	Nickel	90
Beryl	96	Potash	44
Chromite	100	Sugar	45
Cobalt	100	Titanium	30
Columbite-Tantalite	100	Tin	100
Copper	37	Tungsten	15
Fibers (Abaca, Sisal, Hemp)	100	Uranium	4
Iron ore	34	Zinc	60

* Source: "U.S. Life Lines" published by U.S. Navy December 1966 as revised by unpublished 1968 data.

While none of the foregoing commodities move in the same quantity as oil, they are nonetheless essential if not vital to our industry and defense. For the most part there are no suitable substitutes or alternatives for these materials. On the other hand, there are substitutes for oil such as atomic power, natural gas, coal, etc.

Vessel Priorities and Standardization

The foregoing brief review of our liquid and dry bulk imports demonstrates our degree of dependency on these materials. In view of our limited CDS funds, it appears imperative that we select vessels for our bulk trade that are sufficiently flexible to operate worldwide and be able to efficiently move those materials on which the U.S. depends heavily in the event foreign flag ships are not available for one reason or another. As stated previously it is *not* the purpose of this memorandum to recommend a particular type of vessel or vessels for the bulk trades but rather to determine whether or not the Seatrain tanker is the type or size vessel which Marad feels it should expend its CDS funds to promote. It is the opinion of this Office that the Seatrain tanker is *not* the vessel which Marad should promote for the following reasons:

1. For reasons heretofore stated—primarily draft and shore storage capacity—the Seatrain tanker is primarily limited to the trade between the U.S. East Coast and Mid East or African areas with respect to the U.S./foreign commerce. Although this trade is relatively large in volume (about 400,000 BPD) it only represents about 2.8% of our total oil requirements or about 12.4% of our total oil imports. In contrast, a smaller tanker that could utilize the relatively shallow ports of Venezuela and the Caribbean area as well as the Mid East and African ports could move up to 18.7% of our total oil requirements or about 82% of all our oil imports (the remaining 18% of imports are moved from Canada by pipeline). Normally such a tanker would not be used in the long haul Mid-East trade, however, it can be used *if necessary* and possibly make a profit in a "crisis" market such as today.

2. At this time, it appears that the U.S. would prefer to obtain crude oil from sources other than the Mid-East to satisfy its ever-increasing demand for oil. In March 1970, a White House task force recommended that the oil import policy be changed to make the U.S. gradually more dependent on supplies imported from Mid-East. Since then, production and transportation of Mid-East oil has been so disrupted that petroleum from that part of the world is no longer cheap nor dependable. As a result, the task-force report has been shelved and serious attention has been given to (1) working out a long range continental energy policy with Canada which has vast untapped oil and natural gas reserves, (2) the greater utilization of offshore oil resources in the Gulf of Mexico as evidenced by the Department of Interior's lifting of the ban on such leases effective December 15, 1970, and (3) the further development of reserves in the "lower 48 states" based on the National Petroleum Counsel's report of July 1970 that there are still vast oil and gas reserves in the "lower 48." In view of the apparent desire of the United States to lessen its dependency on Mid-East oil and developing sources closer to "home," there appears to be a diminishing rather than an increasing need for large tankers—such as the Seatrain tanker in the U.S. foreign commerce.

3. During 1969, it was announced that Marad would develop a series of standard ship designs suitable for multi-ship, multi-year production. Subsequently, the Competitive Merchant Ship Program was inaugurated and contracts were let to Newport News Shipbuilding & Dry Dock Co. and Bath Iron Works to develop a series of standard ships of all types—to be known as the CMX designs. Both companies were assisted by various research institutions and a 12 man advisory panel of senior officers in various steamship companies sponsored by the American Institute of Merchant Shipping (AIMS). In

depth studies were conducted which included trade forecasts through 1982, port information, seasonal variation, etc. As a result of these studies and in depth interviews with steamship operators, a number of vessel types and sizes were recommended.

With respect to bulk type ships, it is noted that the largest tankers considered were the 125,000 DWT Voyager class with a draft of 48′ 6″ and the 75,000 DWT Machias class with a draft of 47′ 0″. Both of these vessels have an optional mid-body to make them OBO's. The OBO's considered ranged between 60,000 and 73,000 DWT.

The smaller Machias Class tanker and possibly the larger Voyager class vessel could serve almost all of our offshore oil trades. The OBO's could also serve the same oil trades and have the added flexibility of serving in the vital dry bulk trades as well. They would also have the ability to (1) operate in a three legged trade—i.e., oil on one leg, dry bulk on the second and ballast on the third and (2) operate in the most favorable dry or liquid trade during the peak season thereby further enhancing its revenue potential. On the other hand, the Seatrain tanker—due to its large size, draft and design is virtually "married" to the small (in terms of percent of total trade) and possibly diminishing Mid-East/U.S. oil trade.

In summary, it does *not* appear that the Seatrain tanker is the ideal design to promote as a standardized ship for multi-ship, multi-year production as envisioned by the President's new Maritime Program.

III. *Competitiveness of the Seatrain Tankers in the Foreign Trade*

Seatrain has submitted a half dozen voyage proformas showing the profitability of the Seatrain tankers in the

U.S. foreign trade utilizing, for the most part, existing oil terminal facilities. The crude oil voyages from the Mid-East contemplate the use of St. Johns, N.B. or St. Croix, V.I. as lightening ports prior to proceeding to the Delaware Bay anchorage with a 52 foot draft where further lightening would be accomplished before proceeding up river at a 39 foot draft. To the best of our knowledge, the Seatrain tankers could not utilize either St. Johns or St. Croix at its full 70 foot draft as the maximum depth at St. Johns is about 61 feet (including a 21 foot tide) and about 60 feet at the Hess Oil Terminal in St. Croix. The vessels could utilize the Delaware Bay anchorage with a 52 foot draft—however about 48,000 tons would have to be lightened in order to proceed up river with a 39 foot draft. Seatrain also showed voyages utilizing discharge ports at (1) Northville, Long Island which has a maximum depth of 70 feet (including a 3 foot tide) at an exposed sea berth, however, due to sea conditions, the Seatrain tankers could not use this berth at its full 70 foot draft, (2) Seattle with full draft, however, the maximum depth available will only be 60 feet at the Atlantic Richfield facility, and (3) San Francisco with a 51 foot draft after discharging part of its cargo at Yokahoma, however, the vessels would have to be lightened to about 39 feet in order to proceed to the refineries. Hence, all the proformas do in fact contemplate either improvements at the various oil terminals, the carriage of less than a full load of cargo, or considerable lightening of the vessels.

We have reviewed Seatrain's proformas, and find that their estimates are not grossly in error. We and Ship Operations doubt that they will be able to use a 28 man crew; therefore, we recalculated their expenses utilizing a 35 man crew and first year interest expense rather than mid life. Utilizing our revised expenses, we find that the Seatrain tankers could operate profitably in

today's inflated foreign market. However, we do not feel they will operate in the U.S. foreign trade as proposed primarily for two reasons:

(1) The lightening and/or discharge ports are not adequate as mentioned above, and

(2) no tankers in excess of about 100,000 DWT served the U.S. foreign oil trade even though there were—on December 31, 1969—approximately 60 foreign tankers in excess of 200,000 DWT or 125 in excess of 120,000 DWT—most of which had considerably less draft that [sic] the Seatrain tankers. There are several reasons why larger tankers are not used in the U.S. foreign trade: (1) due to draft restriction at U.S. ports, a large tanker must incur the additional cost of utilizing a lightening port outside of the U.S.; (2) the cost of lightening of about 50,000 or more tons at Delaware Bay is expensive; and (3) the rates for a 100,000 DWT tanker are fairly comparable to that of a 200,000 DWT tanker, hence, the added cost for an additional discharge port and excessive lightening costs at Delaware Bay makes the *final* delivered cost to the charterer *higher* on the larger ship than on the smaller ship. For these reasons we feel the Seatrain proformas are unrealistic. It is our opinion that Seatrain will operate these vessels in the foreign to foreign trade while the rates are inflated and then attempt to operate them in the proposed domestic Alaskan trade when and if facilities are available.

With respect to the *long term* operation of the Seatrain tankers in the foreign trade, we do not believe it will be competitive. Based on Seatrain's construction cost data, a 45% CDS rate, a 35 man crew as opposed to Seatrain's 28 man crew, and first year interest expense at 8¾% plus ¾% mortgage insurance premium, Seatrain could charter its vessels at $2.48/DWT/month to break even. Present rates for *short term* 2 to 3 year

charters with delivery in 1972-1973 approximate \$3.50/DWT/month, hence, they could anticipate a fair profit to about 1975 or 1976. Based on a review of *long term* charters, negotiated since January 1, 1969, rates for a 200,000 DWT tanker ranged from a \$1.45 to \$1.50/ton for a 10 year charter of \$1.75 for an 8 year charter. Recent rates for 5 year charters ranged from \$2.10 to \$2.37/DWT/month. It appears that charterers are willing to pay relatively high rates until about 1975 in order to assure sufficient tonnage until the large number of giant ships now on order are delivered. According to the latest Sun Oil Report (December 31, 1969) there are approximately 200 ships on order in excess of 120,000 DWT or a total of 570 ships with an average DWT of 104,100 tons. Assuming there is not another "crisis" in the tanker market in 1975, it appears that the world tanker market will be overtonnaged and rates will be drastically reduced. Based on Seatrain's required rate and rates that foreign ships can accept, the Seatrain tankers could not compete against the foreign tankers in a *normal* market.

IV. *Domestic Operation of the Seatrain Tankers Built with CDS*

Seatrain, in accordance with its November 3, 1970 memorandum, intends to divert the Seatrain tankers to the domestic trade with Marad's consent up to six months in any one calendar year with the partial repayment of CDS or permanently upon the repayment of the unamortized portion of the CDS.

We are opposed to the return of any vessel built with CDS to the domestic trade that is capable of the carriage of liquid bulk cargoes primarily for two reasons— namely (1) it is inconsistent with the basic policies of the Act, and (2) it presents unfair competition to existing and proposed domestic vessels built and operated without government subsidies.

The legislative history of Section 506 shows that the provision for the transfer of a vessel built with CDS to the domestic trade for a period not exceeding 6 months was intended for *emergency* or *temporary* purposes. As originally enacted, Section 506 provided in part as follows:

"If an emergency arises which, in the opinion of the Commission, warrants the temporary transfer of a vessel, for the construction of which any subsidy has been paid pursuant to this title, to service other than exclusive operation in foreign trade, the Commission may permit such transfer: Provided, That no operating differential subsidy shall be paid during the duration of such temporary or emergency period, and such period shall not exceed three months."

While the specific references to a transfer for emergency and temporary purposes were not retained in a 1938 amendment, Congress intended no essential change. In H.R. Report No. 2168, the House Committee on Merchant Marine and Fisheries stated the following:

"No fundamental change in the original purpose of the section has been effected."

Both Chairman Kennedy of the Maritime Commission and the Senate Committee on Commerce in S. Report No. 1618 said as follows regarding the amendment to section 506:

"It is believed that the section as rewritten will result in improved administration and will protect the interests of the Government and those of the carriers, both foreign and domestic."

Since the provision for transfer to services other than those enumerated in the first sentence of section 506 is intended for emergency or temporary purposes, it would

appear to be inconsistent with this intention to base the necessary findings for a CDS award on such transfers which might involve a total period equal to one-half the economic life of each ship. Use of the ships under such conditions would *not* be transfers for temporary or emergency purposes.

Seatrain's proposal also suggests that the tankers could be operated without restriction in the domestic trades upon repayment of the full unamortized portion of the CDS. Neither section 506 nor any other provision of the Act relating to the CDS provides for releasing a CDS built ship from the domestic trade restrictions imposed by section 506 upon repayment of unamortized CDS. However, in a decision letter dated September 30, 1964 (B-155036) the Comptroller General concurred in the opinion of the Department of Commerce that the Maritime Subsidy Board had the authority to amend construction-differential subsidy contracts to free the ships built with the aid of subsidy granted under such contracts from the restrictive provisions incorporated therein pursuant to section 506. Apparently Seatrain, in proposing the possibility of entirely lifting the Section 506 restriction, is relying upon the Department's opinion and concurrence by the Comptroller General.

While it is acknowledged that this opinion and concurrence therein did permit the lifting of the section 506 restriction from existing ships in a *particular instance*, it would appear inconsistent with the basic purpose of CDS to build ships for the U.S. foreign trade and to consider an application for CDS based on initial acceptance of the premise that at any time after the building of the ships, Seatrain might obtain a release from the section 506 restrictions by repayment of unamortized CDS.*

* The foregoing legislative history and conclusions were confirmed by legal opinion dated December 10, 1970 (attached).

Seatrain's proposal—or any proposal to operate a liquid bulk carrier in the domestic service that was built with CDS poses unfair competition to the domestic carrier that operates without any government subsidies even though there is a repayment of CDS for the time the vessels operate in the domestic service primarily for two reasons:

(1) The Vessel amortization costs (principal and interest) per voyage for a vessel built with CDS is less than that for a vessel built without CDS even though a proportionate share of the CDS is repaid. This is true for the simple reason that the unsubsidized owner must pay interest on the full cost of the vessel whereas the subsidized owner is only paying interest on approximately one-half of the cost of the vessel. In other words, CDS represents an interest free loan to the subsidized operator while operating in the domestic trade. Since interest represent a substantial cost to the operator, any reductions in such costs are a *real* advantage; and

(2) If a vessel is built with CDS and permitted to operate in the domestic trade more or less at will, it has the opportunity to operate in the domestic trade during the "peak" season and in the foreign trade during the "off" domestic season. The unsubsidized vessel normally does not have this opportunity therefore it must make its profit during the "peak" domestic season. Obviously if the CDS vessel is allowed to "skim the trade" during the peak domestic season in conjunction with its lower operating costs (item (1)), the CDS vessel or a group of CDS vessels so operated could eventually break the solely domestic operator. Additionally there would be little or no incentive for an owner to build a vessel solely for the domestic trade if he has to encounter unfair competi-

tion from subsidized operators operating in the domestic trade for the profitable portion of the year.

M. E. Parr
Chief, Office of Subsidy Administration

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Attachment 3

U.S. DEPARTMENT OF COMMERCE

ABSTRACT OF SECRETARIAL CORRESPONDENCE

TO: [X] The Secretary [ ] The Under Secretary

FROM: General Counsel

SUBJECT: Alternative Sources of Department of Commerce Funding for Seatrain Shipbuilding

The attached memorandum sets forth the joint views of the Maritime Administration (MarAd) and the Economic Development Administration (EDA) on possible sources of departmental funding for the Seatrain Shipbuilding Corporation of New York, which is currently in default on its loan obligations because of the collapse of the world tanker market.

As the memorandum indicates in connection with the second alternative, dealing with an EDA loan guarantee, it is the joint view of the two agencies that MarAd has no satisfactory alternative for providing the necessary assistance and that EDA participation would be required if Federal assistance is to be provided. An addendum to the principal memorandum sets forth the problems with respect to any form of further assistance by MarAd.

Attachment

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SURNAME AND ORGANIZATION (*Typed*)	PREPARED BY KEBakke General Counsel

ATTACHMENT I

Consideration of Completing Two Ships under Construction at Seatrain Shipyard under Maritime Administration Programs and Authorities

Current Status

Hull #102 was contracted for on June 30, 1972 at a contract price of $62.9 million. Based on this contract price the maximum authorized construction-differential subsidy (CDS) of $27.0 million was awarded and the maximum authorized Title XI guaranteed construction loan (Title XI) of $30.2 million was committed. At the present time approximately $22.1 million of CDS and $20.0 million of Title XI have actually been invested in the vessel. It is estimated that in addition to the balances of CDS and Title XI funds committed but not yet expended a minimum of $14.3 million will be required to complete the construction of Hull #102. The total construction cost of the vessel, including owner's equity, is projected to be at least $91.0 million.

Hull #103 was contracted for on June 29, 1973 at a contract price of $70.6 million. Based on this contract price the maximum authorized CDS of $28.8 million was awarded and the maximum authorized Title XI of $34.5 million was committed. Currently approximately $9.4 million of CDS and $3.5 million of Title XI have actually been expended. It is estimated that a minimum of $25.7 million of new funds will be required to complete the construction of Hull #103 resulting in a total construction cost, including owner's equity, of at least $103.3 million.

MarAd's Programs and Authorities

CDS—The amount of CDS is determined on the differential between the fair and reasonable domestic contract price and the estimated fair and reasonable foreign price of a similar vessel. Since these prices have not changed, there is no statutory authority to increase the amount of CDS applicable to these vessels.

Title XI—The maximum Title XI authorized by statute is 75% of the owner's "fair and reasonable actual cost" for a vessel constructed with the aid of CDS or 87½% of the owner's "fair and reasonable actual cost" of a vessel constructed without the aid of CDS. In all cases a finding must be made that the project is economically sound and can adequately support the amount of guaranteed borrowings. Consideration of additional Title XI guaranteed loans for these vessels is discussed below.

Section 207 of the Merchant Marine Act, 1936, as amended—This section of the Act authorizes MarAd to make such disbursements as may, in its discretion, be necessary to protect, preserve or improve the collateral held by MarAd to secure indebtedness in the same manner that a private corporation may contract within the scope of authority of its charter. This authority has been used in the past only with the specific concurrence of the General Accounting Office. Consideration of the use of this authority is discussed below.

Consideration of Possible Actions by MarAd

1. *Commitment of additional Title XI guaranteed loans to complete the two vessels for employment in the foreign trade*

As noted above, MarAd's present Title XI commitment for the two vessels is $64.7 million and a minimum of $40.0 million of additional funds is required to complete the vessels. If these additional funds were provided by Title XI guarantees, the total Title XI guarantee exposure would be $104.7 or an average of $52.35 million per vessel. Currently, due to the depressed world tanker

market, vessels of this size have an estimated sales value of approximately $30 million. Prospects for any improvement in this market over at least the next three to five years are not favorable due to a projected over-tonnaged condition of tankers in the world trade. Clearly an economic soundness finding cannot be made to support an additional Title XI commitment under present circumstances. The institution of an oil cargo preference program for U.S.-flag tankers would increase the value of these vessels and might make them more economically feasible in the foreign trade. The extent of the increased value would depend in large measure on the nature of the oil cargo preference program and the value attributed to such a program by potential purchasers or long-term charterers of these ships.

2. *Commitment of additional Title XI guaranteed loans to repay and replace CDS and to complete the two vessels for employment in the Alaskan Oil Trade*

It is possible with the consent of MarAd and the concurrence of the GAO for the owner to repay the CDS and thereby make these vessels eligible for employment in the domestic trade. MarAd has determined by comparisons with vessels currently being contracted for use in the Alaskan oil trade that these vessels would have a value of $84 million and possibly higher. The amount of additional Title XI guaranteed loans to complete the vessels for the domestic trade would be at least $100.3 million, consisting of $55.8 million to repay and replace CDS, $40.0 million of additional construction cost and $4.5 million of additional interest during construction. This would increase the total Title XI for the two vessels to $165.0 million. Although the sales value of $84 million per ship would appear to support this approach, it has several shortcomings. First, it would essentially eliminate any potential alternative employment of the vessels in the foreign trade because of the extremely high

capital cost without CDS. Secondly, it would create a problem of making an economic soundness finding since the Title XI guaranteed loans would be almost 100% of the projected sales value. Thirdly, it would be necessary to establish a "fair and reasonable actual cost" of $188.6 million to support an 87½% Title XI guarantee of $165.0 million. Although the total capitalizable cost would exceed this amount, it is questionable that a figure as high as $188.6 million could be deemed to be "fair and reasonable."

3. *Application of Section 207 to advance funds to complete the two vessels for employment in the foreign trade*

The amount of funds that would be needed to be disbursed under the authority of Section 207 to complete the two ships for use in the foreign trade would be a minimum of $40.0 million, the same as under item 1 above. The total MarAd exposure, including the existing Title XI commitment, would be $104.7 million. Assuming a sales value of $30.0 million per ship, the potential loss to the Government would be $44.7 million. At the present time MarAd's exposure on its Title XI guarantee is $23.5 million, representing the Title XI guaranteed loans actually invested in the two vessels. It is estimated that the scrap value of the two hulls plus other collateral held by MarAd would produce proceeds of approximately $10.5 million. The net loss from an immediate default, therefore, would be approximately $13.0 million. Based on these comparative positions, it is not possible to conclude that advances under authority of Section 207 would "protect, preserve or improve" MarAd's collateral position.

4. *Application of Section 207 to advance funds to repay and replace CDS and to complete the two vessels for employment in the Alaskan oil trade*

Similar to the situation of item 2 above, the amount of disbursements under authority of Section 207 to effect this approach would be $100.3 million. Added to the existing Title XI commitment, MarAd's exposure would be increased to $165.0 million. If the completed vessels are deemed to have a value of $84 million per vessel, the collateral position of MarAd would in fact be improved in comparison with the approximate $13.0 million loss resulting from immediate default. A major bar to this action, however, is that the amount of funds needed to be disbursed pursuant to Section 207 exceeds the balance of the Ship Financing Fund which is the only source of funds available to MarAd for this purpose. In addition, this course of action has the same deficiency as item 2 to the extent that the decision to go forward to complete the vessels for use in the domestic trade by repaying and replacing CDS essentially eliminates the potential alternative employment of the ships in the foreign trade.

Conclusion

The options of completing the vessels for employment in the foreign trade are precluded under MarAd's statutory authorities considering present and foreseeable future conditions of the world tanker market, particularly in the absence of an oil cargo preference program for U.S.-flag tankers. Completing the vessels for use in the domestic trade and repaying and replacing CDS might be legally possible, but it is not the most viable solution. The repayment of CDS now and the need to commit other Government funds to replace CDS compounds the funding problem. It also effectively removes a potential alternative source of employment in the foreign trade which would be an important consideration if a cargo preference program is instituted in the future. The use of the EDA program to provide funds needed to complete the vessels over and above MarAd's current commitments of CDS and Title XI would reduce the amount of new Government funds now required, would produce more unguaranteed private financing, would reduce the cost of interest during construction, and would preserve the alternative employment of the vessels when completed.

ATTACHMENT 4

LEGAL OPINION

430 December 17, 1952

210 L25-24/L10-5:212

Application of Section 506 of the Merchant Marine Act, 1936, as Amended, to Essential Vessels on which Adjustments and Arrangements were Granted Pursuant to the Provisions of the Relief Act (Public Resolution No. 89—76th Congress)

This will refer to your memorandum of July 30, 1952, on the above subject, inquiring in connection with the application of the General Counsel's opinion of September 21, 1948, "as to whether, pursuant to Section 506, there is required to be taken into account periods during which the vessels involved were operated pursuant to the provisions of the so-called 'Relief Act' and the corresponding domestic revenue carried by the Owners during such periods." Specifically, your inquiry concerns the operation of the SS AMERICA under the Relief Act in the West Indies Cruise Service and for two intercoastal voyages betwen New York and San Francisco.

At the time United States Lines agreed to purchase the AMERICA under Construction-Differential Subsidy Agreement No. MCc-924, dated October 21, 1937, Section 506 provided as follows:

> "It shall be unlawful to operate any vessel for the construction of which any subsidy has been paid pursuant to this title, other than exclusively in foreign trade, or on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at an island possession or island territory of the United States, unless the owner of such vessel shall receive the written consent of the Commission so to operate and prior to such operation shall agree to pay to the Commission, upon such terms and conditions as the Commission may prescribe, an amount which bears the same proportion to the construction subsidy theretofore paid or agreed to be paid (excluding cost of national-defense features as hereinbefore provided), as the remaining economic life of the vessel bears to its entire economic life. If an emergency arises which, in the opinion of the Commission, warrants the temporary transfer of a vessel, for the construction of which any subsidy has been paid pursuant to this title, to service other than exclusive operation in foreign trade, the Commission may permit such transfer: Provided, That no operating differential subsidy shall be paid during the duration of such temporary or emergency period, and such period shall not exceed three months. Every contractor receiving a contract for a construction-differential subsidy under the provisions of this title shall agree that if the subsidized vessel engages in domestic trade on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or lands or discharges cargo or passengers at an island possession or island territory as permitted by this section, that the contractor will repay annually to the Commission that proportion of one-twentieth of such construction subsidy as the gross revenue of such protected trade bears to the gross revenue derived from the entire voyage completed during the preceding year."

However, at the time of delivery of the vessel on July 2, 1940, Section 506 had been amended by the Act of June 23, 1938, to read as follows:

> "Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Commission that proportion of one-twentieth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Commission may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Commission may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Commission, upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Commission as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for

> the operation of such vessel for such temporary period".

The provisions of the Construction-Differential Subsidy Agreement pertaining to the operation of the vessel followed the original Section and have apparently continued unchanged.

Because of the necessity for the suspension of operation of vessels in certain foreign trades as a result of the Neutrality Act of 1939, the Relief Act was enacted on June 29, 1940, to make emergency provision for the maintenance of "essential vessels" affected by the Neutrality Act and for the adjustment of obligations with respect to such vessels. Under this Act, the Maritime Commission was authorized, subject to certain determinations being made, to make adjustments and arrangements with applicants for relief in accordance with Subsection (c) of such Act, reading in part as follows:

> "(c) Such adjustments and arrangements shall include suspension of the requirement to operate such vessel in foreign trade under the applicable operating-differential or construction-differential subsidy contract or mortgage or other agreement, and of the right to operating-differential subsidy in respect of such vessel, and may include any one or more of the following provisions, in whole or in part, as, and to the extent that, the Commission may deem to be necessary or appropriate to carry out the purposes of the Merchant Marine Act, 1936, or the purposes and provisions of this joint resolution:
>
> "(1) Lay-up of the vessel by the owner or, at the option of the Commission, in the custody of the Commission, with payment or reimbursement by the Commission of necessary and proper expenses thereof (including reasonable overhead and insurance), or

in lieu of such payment or reimbursement, a fixed periodic allowance therefor.

* * * *

"(5) Provisions for such temporary or emergency employment of the vessel in lieu of lay-up as may be practicable, with such arrangements for management of the vessel, payment of expenses, and application of the proceeds of such employment, as the Commission may approve, the period or periods of such operation being included as part of the period or periods of lay-up".

With regard to the AMERICA, I am advised by your office that there was no formal agreement with United States Lines covering the operation of the vessel under the Relief Act. This is confirmed by our review of the files which indicates that such operation was conducted pursuant to (a) the application of United States Lines of June 29, 1940, as amended September 19, and 27, 1940, (b) the Commission's actions on such applications on July 9, 1940 (authorizing operation in the West Indies Cruise Service), November 26, 1940 (authorizing intercoastal operation), June 27, 1941 (authorizing the charter of the vessel by the Commission for subcharter to the War Department), October 16, 1941 (final review and approval of relief application), December 29, 1942 (termination of arrangements under Relief Act), and on other dates (authorizing the deferment of payments of mortgage principal and interest), and (c) the Commission's notices of those actions to United States Lines. However, I have been unable to find any specific reference in the application or in the Commission actions or notices regarding the repayment of construction-differential subsidy pursuant to Section 506 of the 1936 Act during the period of authorized operation in the domestic trade. Likewise, there is no such specific reference in the Relief Act. The answer to your question, therefore,

is dependent upon the interpretation and application of the above-quoted provisions of the Relief Act.

As noted above, the provisions of Section 506 were different at the time the contract to purchase the AMERICA was signed than at the time the vessel was delivered and, of course, operated under the Relief Act. The provisions of the purchase contract followed the earlier version of Section 506. However, it does not appear necessary for the purpose of your question to decide which of these provisions would normally be applicable to the operation in question. It suffices to note that under either provision the requirement to repay construction-differential subsidy for operation in domestic trade is imposed as an incident to the requirement to operate the vessel in foreign trade.[1] Therefore, since the requirement to operate the vessel in foreign trade is mandatorily suspended by the above-quoted language of subsection (c) of the Relief Act, the requirement for the repayment of subsidy for operation in domestic trade must likewise be deemed suspended by force of the Relief Act as to any temporary or emergency employment of the vessel in domestic trade pursuant to the provisions of the Relief Act. In other words, the suspension of the requirement for operation of the vessel in foreign trade must of necessity include the suspension of the consequences provided for operation of the vessel in other than foreign trade.[2] Moreover, from a general purpose standpoint,

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[1] See in this connection the General Counsel's memorandum of September 21, 1946, wherein the purpose of Section 506, both before and after amendment, is discussed at length.

[2] While the technical argument might be advanced that the suspension of the contractual requirement respecting the operation of the vessel (i.e. the provisions of the Construction-Differential Subsidy Amendment) would not constitute a suspension of a statutory requirement not in existence at the time of such contract (i.e. the provisions of Section 506 in its amended form)—assuming the possibility of the application of such statutory requirement

since it was the plan of the Relief Act to make emergency provision for the maintenance of essential vessels and for the adjustment of obligations with respect to such vessels, including the temporary employment of the vessels in lieu of their lay-up, obviously as an expense-saving arrangement to the Government, it seems quite clear that there could have been no intention to continue an obligation of the contractor which logically would have called for equivalent relief by the Government.

I have examined the legislative history of the Relief Act and find that the reports of the House and Senate Committees, House Report No. 2486 and Senate Report No. 1714, both to accompanying S. J. Res. 260, contain no specific statements on the question. However, in the hearings on S. J. Res. 260 conducted by the House Committee, entitled "Maintenance of Vessels Affected by the Neutrality Act," dated June 1, 1940, the point was made that vessels receiving construction-differential subsidy could be operated in the intercoastal and coastwise trades. This was brought out in a letter to Congressman Blasi from the Luckenbach Steamship Co., Inc., dated May 31,

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standing alone—the better view would seem to be that the legislation suspending the contractual requirement stemming from the earlier statutory requirement (i.e. the provisions of Section 506 in its original form) would be sufficient to suspend not only the earlier but also the later statutory requirement, both of which relate to the same subject, namely, the owner's obligation to operate subsidized vessels in foreign trade. In other words, the suspension of the requirement of the Construction-Differential Subsidy Agreement to operate the vessel in foreign trade would be sufficient to include the suspension of the statutory requirement of Section 506 both in its original and amended form. Moreover, it may fairly be argued that since the Construction-Differential Subsidy Agreement contained the overall, general provision that "the vessel shall be operated as prescribed by the Act", the suspension of the contractual requirement automatically suspended the statutory requirement of Section 506 both in its original and amended form.

1940, quoted in the Hearings on page 9, which states in parts as follows:

> "The purpose of the above-mentioned act is to make emergency provisions to enable maintenance of essential vessels affected by the Neutrality Act of 1939 and the adjustment of obligations of such vessels.
>
> Under its provisions vessel owners, the Commission, or charterers could operate in the intercoastal and coastwise trades vessels assigned to foreign routes under the Merchant Marine Act of 1936, which it is impossible to operate under the Neutrality Act of 1939.
>
> It would also be possible for such vessels when operated in the intercoastal and coastwise trades to receive construction and operating differentials. This is discriminatory class legislation and it also breaches the intent and text of certain sections of the intercoastal and coastwise laws and the Merchant Marine Act of 1936."

The reaction of the Committee seems to have been to recognize the possibility of such operation by subsidized vessels but to leave to the Maritime Commission in the administration of the Relief Act the matter of making provision for emergency operation of such vessels with due regard to existing services. This is indicated by the statements of Committee members immediately following the inclusion of the Luckenbach letter in the Hearings, as follows:

> "MR. OLIVER: Of course his objection would apply to the general situation—barring the situation where there is now a subsidy—where domestic shipping does not have a subsidy. But if those ships are not to be transferred over to the domestic trade, or in routes adequately served now, it does not seem

to me there is anything to be particularly disturbed about.

MR. BOYKIN: That is right."

Further in this connection, House Report No. 2486 states as follows:

"Some concern was expressed by representatives of the steamship industry during the committee hearings as to danger of legislation which may be broad enough to permit the operation of dislocated vessels under Government auspices in areas already served by American vessels. Your Committee feels that broad discretion necessarily must be vested in the Commission in order to protect the national interest in the maintenance of vessels essential to the American merchant marine, and that this discretion will be administered by the Commission with due regard to existing services."

The same possibility, i.e. of vessels receiving construction-differential subsidy operating in domestic trade, appears to have been recognized by the Maritime Commission on November 26, 1940 when it approved the recommendation of the Chief Examiner dated November 15, 1940, reading in part as follows:

"The hearing was held October 10, 1940 with recesses to October 17, and October 22. At the first session a letter was submitted by a representative of American-Hawaiian Steamship Company reiterating objections previously made at other hearings to the operation of Government aided vessels in the intercoastal trade in competition with unsubsidized private operators. In this letter it was contended that the cost of any relief to which the applicants might be entitled on account of the burdens of the Neutrality Act should be borne by the public gen-

erally and should not be imposed upon a few intercoastal lines by subjecting them to Government subsidized competition. These objections were endorsed by a representative of Luckenbach Steamship Company who testified at the hearing."

Needless to say, these objections would have been lacking in value had it been recognized that the usual requirement to repay subsidy pursuant to Section 506 remained effective with regard to operations in domestic trade under the Relief Act.

Thus it appears that the interpretation and application of the Relief Act hereinabove given is not inconsistent either with the indicated intent of the Congress in the enactment of such Act or of the Maritime Commission in its administration.

Accordingly, it is my opinion that the answer to the question raised in your memorandum is that for the purpose of applying Section 506 neither the period of operation of the AMERICA under the Relief Act nor the domestic revenues earned during such period should be taken into account.

/s/ Elmer E. Metz
ELMER E. METZ
Assistant General Counsel

/s/ J. R. Tankard
J. R. TANKARD:rg

cc:	210-2	431-2
	212 JKH	610-2
	212 JRT	211
		762

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

AMENDMENT OF COMPLAINT

Plaintiffs Alaska Bulk Carriers, Inc. and Trinidad Corporation hereby amend Paragraph 35 of their complaint, as a matter of course pursuant to Rule 15(a), Federal Rules of Civil Procedure, to state as follows:

35. The actions taken by MarAd/MSB approving the Seatrain/Polk proposal are wholly unauthorized and beyond its powers in that the agency:

(a) lacks authority to release the vessel owner from the statutory restrictions of section 506 barring operation of a vessel built with CDS in domestic trades;

(b) lacks authority to accept the repayment of construction differential subsidy in full so as to "cleanse" the vessel of statutory restrictions governing vessels built with the subsidy;

(c) lacks authority to make a loan either for construction of a vessel or for repayment of construction differential subsidy. The actions are also unlawful in that they were taken in violation of the agency's regulations, 46 CFR 250, in violation of the Administrative Procedure Act, 5 USC § 552, contrary to standards of due process, and were arbitrary, capricious and an abuse of discretion, under 5 U.S.C. § 706.

The amendment consists of inserting the phrases "in violation of the Administrative Procedure Act, 5 USC

§ 552" and "were arbitrary, capricious and an abuse of discretion under 5 USC § 706" in subparagraph (c) of Paragraph 35.

Respectfully submitted,

ALAN G. CHOATE
PEPPER, HAMILTON & SCHEETZ
123 South Broad Street
Philadelphia, Pennsylvania 19109
Tel. (215) 545-1234

AMY LOESERMAN KLEIN
WILLIAM KARAS
DAVID P. STREET
GALLAND, KHARASCH, CALKINS
& SHORT
1054 Thirty-first Street, N.W.
Washington, D.C. 20007
Tel. (202) 333-2200

Attorneys for
ALASKA BULK CARRIERS, INC.
TRINIDAD CORPORATION

October 20, 1977

[Certificate of Service Omitted in Printing]

Civil Action No. 77-1645

Civil Action No. 77-1647

[Caption Omitted in Printing]

STIPULATION OF UNDISPUTED FACTS

The parties having conferred as to the facts in this case do hereby stipulate and agree as follows:

1. In June, 1972, the Maritime Subsidy Board (MSB) entered into a CDS contract (MA/MSB-164) with Seatrain Shipbuilding Corporation (hereafter Shipbuilding) relating to the construction of the TT STUYVESANT, a 225,000 dwt very large crude carrier. In June, 1972, the agency entered into a CDS contract (MA/MSB-165) with Polk Tanker Corporation (hereafter Polk) relating to purchase of the TT STUYVESANT. The contracts are attached hereto as Exhibits A and B.

2. Pursuant to these contracts, MSB paid $27,200,000 of CDS for the TT STUYVESANT.

3. Additionally, $28,845,000 in construction loans were guaranteed by the Secretary under Title XI of the Merchant Marine Act, 1936 prior to the actions contested in this case.

4. On July 8, 1977, Polk filed an application with the Assistant Secretary of Commerce for Maritime Affairs (hereafter MarAd/MSB). That application is attached hereto as Exhibit C.

5. Notice of the application was published in the Federal Register on July 19, 1977. MarAd assigned the application Docket No. S-565; numerous public comments were received opposing the application including comments from Shell and Alaska Bulk Carriers, Inc.

6. On August 25, 1977, Polk filed an application with MarAd/MSB. No notice of that application was published in the Federal Register. A copy of that application is attached hereto as Exhibit D.

7. On August 26, 1977, Polk submitted a letter to MarAd/MSB withdrawing the July 8th application. No notice of that letter was published in the Federal Register. A copy of that letter is attached as Exhibit E.

8. MarAd/MSB took a series of actions with respect to Polk's August 25, 1977, application. These actions are set forth in two letters, each dated August 31, 1977, from MarAd/MSB to Polk and Queensway Tanker, Inc., which are attached hereto as Exhibits F and G.

9. On September 30, 1977, MarAd/MSB carried out the action set forth in the two letters of August 31st.

STEPHEN N. SHULMAN
Attorney for Shell Oil Company

AMY L. KLEIN
Attorney for Alaska Bulk Carriers, Inc., and Trinidad Corp.

JOSEPH SHER
Attorney for the Federal Defendants

/s/ William E. McDaniels
WILLIAM E. MCDANIELS
Attorney for Seatrain Shipbuilding Corp., and Polk Tanker Corp.

October 20, 1977

EXHIBIT A

MARITIME SUBSIDY BOARD
U.S. DEPARTMENT OF COMMERCE

CONSTRUCTION-DIFFERENTIAL SUBSIDY
CONTRACT MA/MSB-164

BETWEEN THE MARITIME SUBSIDY BOARD
AND SEATRAIN SHIPBUILDING CORP.

CONTRACT MA/MSB-164 BETWEEN THE MARITIME SUBSIDY BOARD AND SEATRAIN SHIPBUILDING CORP. FOR CONSTRUCTION-DIFFERENTIAL SUBSIDY FOR THE CONSTRUCTION OF ONE BULK OIL TANKER VESSEL FOR POLK TANKER CORPORATION

THIS CONTRACT, ENTERED INTO AS OF THE 30th day of June, 1972, by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the SECRETARY OF COMMERCE, acting by and through the MARITIME SUBSIDY BOARD (said Secretary of Commerce acting by and through the Maritime Subsidy Board being herein called the "Board") and SEATRAIN SHIPBUILDING CORP., a corporation organized and existing under the laws of the State of New York (hereinafter called the "Contractor");

WITNESSETH:

WHEREAS:

1. Pursuant to sections 501(a) and 504 of the Merchant Marine Act, 1936, as amended (herein referred to as the "Act"), all of the applicable requirements of Title V of the Act, and other applicable provisions of law, POLK TANKER CORPORATION (hereinafter called the "Purchaser"), a citizen of the United States, has made application to the Board (which term shall mean the Maritime Subsidy Board or its duly authorized representative, or the Assistant Secretary for Maritime Affairs or his duly authorized representative, as the case may be), for a construction-differential subsidy to aid in the construction of one (1) single screw steam propulsion bulk oil tanker, MA Design T10-S-92a Vessel (hereinafter called the "Vessel") to be constructed under Contract No. MA/MSB-163, (hereinafter called the "Construction Contract") for the Purchaser and to be used in the foreign commerce of the United States; and

2. The Board has determined that (a) the Plans and Specifications call for the construction of a vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for National Defense or military purposes in time of war or national emergency; (b) the Purchaser possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new Vessel; and (c) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of the Act; and

3. The Board has submitted the Plans and Specifications for the construction of the Vessel to the Department of the Navy and has received the required approval thereof; and

4. The Purchaser, in accordance with Sections 502 and 504 of the Act, has negotiated with the Contractor for the construction of the proposed Vessel in accordance with the Plans and Specifications; the Contractor has submitted a price for the construction of the Vessel; the Board considers such price to be fair and reasonable and has approved such price; the Board and the Contractor desire to enter into this Contract providing for the payment of a construction subsidy determined in accordance with Sections 502 and 504 and payment of the cost of National Defense Features; and by the Construction Contract the Purchaser has agreed to pay the remainder of the Contract Price in accordance with section 504 of the Act.

NOW, THEREFORE, in consideration of the premises and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *GENERAL STATEMENT*

Contractor agrees that it shall construct and deliver, in accordance with all provisions of the Construction Contract and subject to the provisions of this Contract, the Vessel identified as

CONTRACTOR'S HULL NO.	MARITIME ADMINISTRATION HULL NO.
102	273

The Vessel shall be constructed in strict accordance with the Plans and Specifications incorporated into the Construction Contract and shall include all National Defense Features specified by the Board.

ARTICLE 2. *CONTRACT PRICE; COST OF NATIONAL DEFENSE FEATURES*

The contract price (hereinafter called the "Contract Price") for the construction of the Vessel under the Construction Contract shall be $62,872,000.00. There shall be payable in addition to the Contract Price the sum of $57,700.00 for National Defense Features.

ARTICLE 3. *CONSTRUCTION-DIFFERENTIAL SUBSIDY*

The Board shall pay to Contractor the sum of $57,700.00 as such sum may be adjusted under Article 8 of this contract, for the cost of all National Defense Features and in addition a construction-differential subsidy (determined in accordance with section 502 of the Act) in the sum of $27,017,500.00, which amount is equal to 42.97 per cent of the Contract Price, as such sum may be adjusted under Article 1(b) of Construction-Differential Subsidy Contract MA/MSB-163 with the Purchaser. The balance of the Contract Price shall be paid to Contractor

by the Purchaser under the terms of the Construction Contract.

ARTICLE 4. *PAYMENT OF CONTRACT PRICE AND COST OF NATIONAL DEFENSE FEATURES*

(a) The Board shall make to the Contractor periodic progress payments of the Board's portion of the Contract Price. Each progress payment shall be made in accordance with the provisions of Article III of the Construction Contract.

(b) The Board shall make to the Contractor periodic progress payments of the cost of National Defense Features. Each progress payment of the cost of National Defense features shall be made in relation to the progress of the contract work.

(c) Any balance of the Board's portion of the Contract Price and any balance of the cost of National Defense Features remaining unpaid at the time of delivery of the Vessel shall be due and payable by the Board upon delivery of the Vessel.

(d) The effect of any change under Article IV of the Construction Contract on the Board's obligation to make periodic progress payments shall be governed by the provisions of Article III(b) of the Construction Contract and Article 3(b) of Contract MA/MSB-165 between the Board and the Purchaser.

(e) The Board's obligation to make periodic progress payments of any increase in the cost of National Defense Features due to changes under Article 8 of this Contract shall be governed by Article 8(d) of this Contract.

ARTICLE 5. *DOMESTIC PREFERENCE*

(a) In the performance of the contract work, the Contractor, sub-contractors, materialmen or suppliers shall use, so far as practicable, only articles, materials and supplies of the growth, production or manufacture of the United States as defined in paragraph (h) of section 401 of the Tariff Act of 1930; provided, however, that with respect to other than major components of the hull, superstructure and any material used in the construction thereof, (i) if the Board determines that the requirements of this sentence will unreasonably delay completion of the Vessel beyond its contract delivery date, and (ii) if such determination includes or is accompanied by a concise explanation of the basis therefor, then the Board may waive such requirements to the extent necessary to prevent such delay.

(b) If the Board shall determine that there has been a reduction in the cost of constructing the Vessel by reason of the substitution of foreign articles, materials or supplies pursuant to paragraph (a) of this ARTICLE 5, the Board's obligation under ARTICLE 3 of this Contract shall be decreased by the full amount of such reduction in cost.

ARTICLE 6. *FUNCTIONS AND RIGHTS OF THE BOARD*

(a) With respect to the performance of the contract work under the Construction Contract, the Board shall be entitled to designate authorized representatives who shall have the authority to give directions under this Contract and where, specific provision is made therefor, under the Construction Contract. Notice of all such designations (together with a statement of the scope of authority of designee), and notice of the revocation of any prior designation shall be given to the Contractor in

writing. The Contractor shall have no obligation to follow any directions of the Board except those which shall be issued in writing over the signature of an authorized representative of the Board acting within the scope of his authority.

(b) Authorized representatives of the Board shall have reasonable access to the Vessel and work in progress during working hours for the purpose of monitoring the progress of the work and determining at the time of completion if the Vessel has been constructed in accordance with the approved Plans and Specifications incorporated into the Construction Contract. The Contractor shall make available to the Board's authorized representatives adequate office space located at or near the construction site, furnished with light, heat and air conditioning (as required by climatic conditions), telephone, desks and file cabinets and at least equivalent to the offices of Contractor's employees of comparable responsibility.

(c) Authorized representatives of the Board shall be entitled to attend all tests, ship trials, and guarantee surveys for the purpose of determining if the Vessel's performance during tests, trials and guarantee surveys meets the requirements of the Plans and Specifications. The Contractor shall provide the Board's representatives with a copy of the schedule for all tests, trials and guarantee surveys but the Contractor shall not be required to reschedule any scheduled test, trial or guarantee survey for the convenience of the Board's representative.

ARTICLE 7. *DOCUMENTS AND DATA TO BE FURNISHED TO THE BOARD*

(a) The Contractor shall furnish to the Board and, where noted, to the Board's authorized field representative, the following documents and data, which are more

fully described in the Plans and Specifications incorporated in the Construction Contract:

(i) Subject to paragraph (b) below, two copies of schedules of all working plans; two copies of all working plans, vendor plans and purchase requisitions after approval by the Purchaser and regulatory bodies concerned; two copies of the erection schedule, material control schedules, steel reports, construction progress and/or payment reports, along with photographs showing monthly progress; and prior to approval by the Purchaser, three copies of key plans as selected by the Board for such review and comment as the Board deems appropriate. Two copies of key plans and one copy of each of the other items shall be sent to the Board, Washington, D.C. One copy of all items shall be sent to the Board's authorized field representative.

(ii) Two copies of correspondence and conference reports between the Contractor and Purchaser and/or any regulatory bodies, concurrently upon issuance or receipt, relating to the construction of the Vessel. One copy of each item of correspondence and each report shall be sent to the Board, Washington, D.C. and one copy to the Board's authorized field representative.

(iii) A monthly force report which shall show the total number of employees on the Contractor's roster, the number of manhours expended on the hull during the period covered, and the cumulative number of manhours expended on the full from the date of contract award.

(iv) One copy of all certificates and documents for the Vessel.

(v) One copy of stability test data if an inclining experiment is conducted.

(vi) One copy of all trial reports for the Vessel.

(vii) One set of instruction books, including index list.

(viii) Subject to paragraph (b) below, three sets of 105 mm film, in accordance with MarAd Specification No. 18-MA-15B, of working plans as itemized and identified in the final plan schedule, including all plans (except vendors' plans) developed to comply with the requirements of the Construction Contract. The following data shall be included on 105 mm film if not shown in the plan schedules: lines plan, capacity plan, docking plan, hydrostatic curves, booklet of general arrangement plans, stability calculations, floodable length curves, and heat balance diagram. The 105 mm film shall embody an index of the plans contained therein.

(ix) One set of cloth processed tracings or mylar of the plans listed in the Specifications incorporated in the Construction Contract.

(x) Three copies of the inventory shortage list agreed upon by the Contractor and Purchaser and three copies of the inventory certification signed by the Contractor and Purchaser.

(xi) One copy of the final delivery inventory, signed by the Contractor and Purchaser, of expendable equipment and spare parts of the Vessel furnished by the Contractor and the Purchaser.

(xii) One copy of the final guarantee survey list for the Vessel.

(b) Any copy for the Board required under paragraph (a)(i) or any 105 mm film negatives required under paragraph (a)(viii) need not be provided if the same item has already been furnished to the Board in connection with another vessel or vessels. In such a case, appropriate reference to the particular plan or film which has been furnished and a statement that it is identical to the corresponding plan applicable to the Vessel, will be sufficient.

ARTICLE 8. *CHANGES*

(a) The Board shall have the right to direct changes in the National Defense Features.

(b) Within thirty (30) days (or such longer period as the Board may approve) after receipt of the Board's written direction of a change in the National Defense Features, the Contractor shall submit to the Board its detailed estimate of the net increase or decrease in the cost of contract work and the probable delay, if any, in delivery of the Vessel to result from such change. The Contractor's estimate shall include the major components of the cost of the change, including labor, materials, engineering, overhead, and the effect on the scheduling of other work in the Contractor's yard or other commitments of the yard then pending. The Purchaser shall be invited to comment on the Contractor's estimate. The Board shall review the estimate and the Purchaser's comments, if any, along with any other cost data available to the Board and shall determine the amount of any net increase or decrease in the estimated cost of the contract work. The Board may at the same time determine the delay in the delivery of the Vessel to result from said change or may determine to make such delay determination without prejudice to the rights of the Contractor after the Vessel is delivered. One hundred and ten per cent (110%) of the net increase in the estimated cost of the contract work resulting from the change cost estimates approved by the Board shall be added to the cost of National Defense Features. In the event of a net decrease in the estimated cost of the contract work resulting from the change cost estimates ap-

proved by the Board, the cost of National Defense Features will be reduced by the amount of the net increase.

(c) The Contractor shall commence the performance of a change directed pursuant to paragraph (a) above at such time as the Board shall direct.

(d) The Contractor shall be entitled to receive partial payments of any increase in the cost of National Defense Features due to a change directed under this Article. The Board shall determine the level of progress payments and the manner in which such payments shall be made.

ARTICLE 9. *RIGHTS OF PURCHASER AND BOARD WITH RESPECT TO ENGINEERING AND DESIGN DATA*

(a) All design and engineering data furnished to the Contractor by the Purchaser shall be the sole property of the Purchaser and all such data furnished to the Contractor by the Board shall be the sole property of the Board. The use or reuse of said design and engineering data by the Contractor shall be governed by the Purchaser or the Board as their interests appear.

(b) All plans, including working plans (including reproducibles) and such other specified design and engineering data, required to be furnished to the Purchaser by the Plans and Specifications and produced by the Contractor in the performance of this Contract or the Construction Contract, shall be the sole property of the Purchaser and the Board, as their interests appear, and the Purchaser or the Board shall have the full right to use the same in such manner as each may deem proper, including without limitation to the generality of the foregoing, the right to make reproducibles and copies, the right to publish, or to withhold from publication and the right to make alterations therein, additions thereto, or other changes. Except as provided in ARTICLE 7 of this Contract, the Contractor shall be entitled to recover

the reasonable costs of reproduction and handling in the event that the Contractor is required by the Purchaser or the Board to provide copies of such plans, working plans and design and engineering data to the Board, the Purchaser or any designee of the Board or Purchaser. Unless prohibited by provision of law relating to the National Defense or security, the Contractor shall be permitted to retain copies or duplicates of such plans, working plans and design and engineering data for its own official records. The Contractor shall have the right with the approval of the Board to construct a ship or ships built to such plans, working plans and design and engineering data; provided that neither the Purchaser nor Contractor shall be entitled to any fees, commissions or other monetary benefits (except the reasonable costs of reproduction and handling) for such use or transfer.

(c) All design and engineering data, plans and working plans furnished by the Contractor in the performance of this Contract or the Construction Contract but which were not produced by Contractor in the performance of either Contract shall not become the property of the Purchaser or the Board; provided, however, that the Contractor shall commit to the Board that the Contractor will make such design and engineering data, plans and working plans available to any party that the Board may from time to time designate in return for the payment by the designated party to the Contractor of a reasonable royalty, license fee, or commission. The Contractor's commitment shall apply to both patented and unpatented design and engineering data, plans and working plans, but shall not apply to design and engineering data, plans and working plans licensed by the Contractor from an unaffiliated third party where the terms of the license prevent such a commitment by the Contractor.

(d) Unless otherwise directed by the Board or the Purchaser, the Contractor shall take reasonable precau-

tions to maintain in confidence all information contained in the Plans and Specifications disclosed to it other than information which is known to it at the time of such disclosures, or which is or shall become available to it at the time of such disclosures, or which is or shall become available to it from sources other than the Purchaser, the Board, or the Naval Architect of the Purchaser, or which is or shall become obvious to those skilled in the trade to which such information relates. Notwithstanding anything to the contrary hereinabove contained, the Contractor shall not be precluded from disclosing information which may be necessary for the prosecution of the contract work, provided only that in making such disclosure the Contractor shall impose upon any person, firm or corporation to whom such disclosure is made, conditions relating to the confidential treatment thereof to the same effect as those imposed upon it herein; nor shall the Contractor be responsible for unauthorized actions of its employees provided that the aforementioned reasonable precautions have been taken by it as hereinabove provided.

ARTICLE 10. *INJURY TO EMPLOYEES AND OTHERS; PROPERTY DAMAGE OR LOSS*

(2) The Contractor shall indemnify and save harmless the Board, the Purchaser and the Vessel against all claims arising from the injury or death of employees, workmen, trespassers, licensees and all other persons in, on or about the contract work and from damage to or loss of property of third parties due to the act, neglect or default of the Contractor, its employees, its subcontractors or their employees. For purposes of this Article, it is agreed that the workmen and employees of the Contractor or its subcontractors upon the contract work shall at all times be employees of the Contractor or its subcontractors and

shall not be employees or agents of the Board or the Purchaser.

(b) The Contractor's indemnity set forth in paragraph (a) above shall not apply to any injury or death of any person or to any damage to or loss of property of third parties occurring in connection with the Vessel after the delivery and acceptance of the Vessel by the Purchaser, provided that this exclusion shall not apply to any death occurring after delivery and acceptance due to an injury sustained prior to delivery and acceptance. Accordingly, except with respect to death resulting from an injury occurring before delivery and acceptance, the Contractor's liability to the Board, the Purchaser or the Vessel following delivery of the Vessel shall be limited to its guarantee liability as set forth in ARTICLE XVIII of the Construction Contract.

ARTICLE 11. *TOTAL LOSS OF THE VESSEL*

(a) In the event of an actual or constructive total loss of the Vessel prior to delivery, construction of the Vessel shall proceed unless the Purchaser or the Contractor shall elect within a reasonable period of time to cancel the construction. If an election is made to cancel the construction, the party electing to cancel shall give notice to that effect to the other party and the Board. If no election is made to cancel the construction, then construction and delivery of the Vessel shall proceed in accordance with this Contract and the Construction Contract, as each may have been amended. Nothing in this paragraph (a) shall prevent the Contractor from requesting an extension of the delivery date of the Vessel pursuant to the provisions of ARTICLE VI of the Construction Contract.

(b) In the event that there is an actual or constructive total loss of the Vessel prior to delivery and such loss results from the operation of an insurable risk covered by insurance as required under ARTICLE IX of the Construction Contract, all of the proceeds of such insur-

ance payable as a result of such loss shall be paid to the Board for distribution to the Purchaser and the Government in amounts equal to the total payments made by each for the lost Vessel, with the balance paid to the Contractor. Such distribution shall be made without regard to whether, under paragraph (a) above, construction is cancelled or proceeds.

(c) In the event that there is an actual or constructive total loss of the Vessel prior to delivery which is not covered by insurance and election is made by the Purchaser or the Contractor to cancel construction of the Vessel, the Contractor shall pay to the Board and the Purchaser an amount equal to all payments made under this Contract and the Construction Contract up to the date of the actual or constructive total loss.

ARTICLE 12. *INSURANCE ON THE VESSEL AND MATERIAL*

The Contractor shall be obligated to keep the Vessel and all materials, outfit equipment and appliances insured in accordance with the provisions of ARTICLE IX of the Construction Contract.

ARTICLE 13. *LIMITATION OF GOVERNMENT MONETARY OBLIGATION; LIABILITY FOR ACTS OF PURCHASER*

(a) Except as provided in ARTICLE 15 and ARTICLE 16 of this Contract, the grant of construction-differential subsidy and payment for National Defense Features shall be the exclusive monetary obligations of the Government and the Board under this Contract. The Contractor shall have no recourse under or in any way with respect to this Contract for the consequences of Government priorities, the acts of civil, naval or military authorities, or other acts or omissions of the Government acting in its soverign [sic] capacity.

(b) Neither the Government nor the Board shall be liable to the Contractor or the Purchaser for any direction, act or omission of the Purchaser made without prior written approval of the Board.

ARTICLE 14. *PATENT INFRINGEMENT*

The Contractor shall be responsible for any and all claims against the Board for infringement of patents, patent rights, copyrights or trademarks, in accordance with the provisions of ARTICLE XXVI of the Construction Contract.

ARTICLE 15. *OPTIONAL TERMINATION BY THE BOARD*

(a) Payments under this Contract for the performance of contract work under the Construction Contract may be terminated by the Board in accordance with this Article in whole, or from time to time, in part, whenever the Board shall determine that such termination is in the best interest of the United States. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which such payments and related contract work are terminated, and the date upon which such termination becomes effective. The contract work terminated as a result of termination of payments under this Contract shall include the work associated with the Purchaser's payments under the Construction Contract as well as the work associated with the payments under this Contract, *provided, that,* subject to the approval of the Board, the Purchaser and Contractor may agree to continue all or part of the contract work terminated by the Board in which event the entire cost of continuing any terminated contract work shall be for

the sole account of the Purchaser. Any terminated contract work which is continued by agreement of Purchaser and Contractor shall not be considered contract work terminated by the Board within the meaning of this Article.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Board, or agreed by Purchaser and Contractor in accordance with paragraph (a) above, the Contractor shall (i) stop the contract work on the date and to the extent specified in the Notice of Termination; (ii) place no further orders or subcontracts for material, services or facilities except as may be necessary for the completion of such portion of the contract work as is not terminated; (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (iv) assign to the Purchaser and the Board, or to the Purchaser or the Board, as directed by the Board, in the manner, at the times, and to the extent directed by the Board, all of the right, title and interest of the Contractor under the orders or subcontracts so terminated in which case the Board shall have the right to settle and pay any and all claims arising out of the termination of such orders and subcontracts; (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Board, to the extent that the Board may require, which approval or ratification shall be final for all purposes of this Article; (vi) transfer title to the Board (to the extent that title has not already been transferred or vested in the Purchaser) and deliver to the Purchaser or the Board, in the manner, to the extent and at the times directed by the Board (1) the fabricated or unfabricated parts, work-in-process, completed work supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination,

and (2) the completed or partially completed plans, drawings, information and other property which, if the Construction Contract had been completed, would have been required to be furnished to the Purchaser and the Board; (vii) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Board, any property of the types referred to in provision (vi) of this paragraph (b); provided, however, that the Contractor (1) shall not be required to extend credit to any purchaser, and (2) may acquire any such property under the conditions prescribed by the Board at a price or prices approved by the Board; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Purchaser or the Board under this Contract and the Construction Contract or shall otherwise be credited to the price or cost of the contract work or paid in such other manner as the Board may direct; (viii) complete performance of such part of the contract work as shall not have been terminated by the Notice of Termination; and (ix) take such action as may be necessary, or as the Board may direct, for the protection and preservation of the property related to the Construction Contract which is in the possession of the Contractor and in which the Purchaser or the Board has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulations, as it may be amended from time to time, the Contractor may submit to the Board a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Board, and may request the Board to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Board will accept title to such items and remove them or enter into a storage agreement

covering the same; provided that the list submitted shall be subject to verification by the Board upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Board its termination claim in the form and with the certification prescribed by the Board. Such claim shall be submitted promptly, but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Board upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Board determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit a termination claim within the time allowed, the Board may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c) above, the Contractor and the Board may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of contract work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on contract work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price, as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of work so terminated. This Contract shall be amended accordingly, and the Contractor shall

be paid the agreed amount. Nothing in paragraph (e) of this Article prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Board to agree upon the whole amount to be paid shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed shall be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Board to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of contract work pursuant to this Article, the Board shall determine on the basis of information available to it the amount, if any, due to the Contractor by reason of the termination and shall pay the Contractor the amounts determined as follows:

(i) For completed contract work accepted by the Board (or sold or acquired as provided in paragraph (b) (vii) above) and not previously paid for, a sum equivalent to the aggregate price of said work computed in accordance with the Contract Price.

(ii) The total of:

(1) the costs incurred in the performance of the work terminated exclusive of any costs attributable to work paid or to be paid under paragraph (e) (i) above; and

(2) the cost of settling and paying claims arising out of the termination of contract work under subcontracts or orders, as provided in paragraph (b) (v) above, which are properly chargeable to the termination portion of the contract, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the termination date, which amounts shall be

included in the costs payable under (1) above; and

(3) a sum, as profit, not exceeding 10% of (1) above determined by the Board pursuant to Section 8.303 of the Armed Services Procurement Regulation (ASPR) in effect as of the date of execution of this contract to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Construction Contract had it been completed, no profit shall be included or allowed under this subdivision (3) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

(iii) The reasonable cost of settlement, including accounting, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract work, and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to the contract work. The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of work not terminated. Except for normal spoilage, and except to the extent that the Purchaser and the Board shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) and paragraph (e)(ii)(1) the fair value, as determined by the Board, of property which is destroyed, lost, stolen, or damaged so as to

become undeliverable to the Purchaser or the Board or a buyer pursuant to paragraph (b)(vii).

(f) Any determination of costs under paragraph (c) or (e) of this Article shall be governed by Section XV, ASPR, as in effect on the date of this Contract.

(g) In any case where the Board has made a determination of the amount due under paragraphs (c) or (e) above, the Board shall promptly pay to the Contractor the amount so determined by the Board.

(h) In arriving at the amount due the Contractor under this Article, there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the contract work; (ii) any claim which the Purchaser or the Board may have against the Contractor in connection with this Contract or the Construction Contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor or sold pursuant to the provisions of this Article and not otherwise recovered by or credited to the Board.

(i) If there is a partial termination of the contract work, the Board shall, on Contractor's request and prior to settlement of the terminated portion hereof, increase the price for the continued contract work by the amount, if any, the cost thereof is increased by reason of the partial termination, as determined by the Board; plus a profit determined by the Board pursuant to Section 8.303 of the ASPR in effect as of the date of execution of this Contract.

(j) The Board may from time to time, under such terms and conditions as they may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract work, whenever in the opinion of the

Board the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Contractor to the Board upon demand, together with interest computed at the rate of six per cent (6%) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Board; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition (or such later date determined by the Board by reason of the circumstances).

(k) Unless otherwise provided for in this Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of six (6) years after final settlement under this Contract, shall preserve and make available to the Board at all reasonable times at the office of the Contractor but without direct charge to the Board all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and the Construction Contract, and relating to the work terminated hereunder, or, to the extent approved by the Board, photographs, microphotographs, or other suitable reproductions thereof.

ARTICLE 16. *DEFAULT OF PURCHASER IN CONTRACT PAYMENTS*

(a) In the event Purchaser fails to make a required payment or payments under the Construction Contract, the Contractor may give the Purchaser and the Board written notice of such failure. Unless the Purchaser remedies such failure within fifteen (15) days from the receipt of said written notice or such longer period as may be agreed to by the Contract, the Contractor may give written notice of the Purchaser's default to the Purchaser and the Board. Within fifteen (15) days after receipt of said notice of default or such longer period as may be agreed to by the Contractor, the Board shall give the Contractor and Purchaser written notice of one of the following:

(i) The Board's election to assume the payments required to be made by the Purchaser under the Construction Contract;

(ii) The Board's Optional termination of all contract work pursuant to Article 15 above.

(b) In the event that the Board assumes the Purchaser's payments pursuant to (a)(i) above, the Board shall promptly pay all of Purchaser's delinquent payments.

(c) A copy of the Board's notice to the Contractor, pursuant to (a)(i) or (a)(ii) above, shall be delivered to the Purchaser by the Board. As of the date of said notice, all rights of the Purchaser under this Contract and the Construction Contract and all title of the Purchaser in the Vessel and in the contract materials shall vest in the Board. All such vesting of rights and title and the assumption of obligations as provided in paragraph (b) above, are made so that the Board may thereafter proceed in the manner it deems best. Such vesting and assumption, however, shall be without prejudice to the rights and obligations as between the Purchaser and the Board.

(d) The provisions of this Article shall in no way restrict or prejudice the right of the Contractor to pursue any remedies it may have with regard to any default of the Purchaser in any of the Purchaser's obligations

under the Construction Contract, other than payments to be made by the Purchaser.

ARTICLE 17. *DEFAULT OF CONTRACTOR*

The following shall constitute events of default under this Contract:

(a) The failure of the Contractor to prosecute the contract work with such diligence and in such manner as will enable it to complete said work in accordance with the delivery date or dates set forth in the Construction Contract, except and to the extent that such failure is due to the causes stated in ARTICLE VI of the Construction Contract for which the Contractor would be entitled to an extension of a contract delivery date provided, that the Purchaser, with the approval of the Board, shall have given the Contractor notice of such failure and that the Contractor shall not, within fifteen (15) days of the date of receipt of such notice, have shown to the satisfaction of the Board that it has taken steps sufficient to remedy the failure in a manner satisfactory to the Purchaser and the Board.

(b) The failure of the Contractor in any other respect to use due diligence in the performance of the contract work or its failure to perform any of the covenants, agreements, or undertakings on its part to be performed under the Construction Contract, including but not limited to, the agreement to make prompt payment for all labor, material, services, and other charges which are to be paid by the Contractor; provided, that the Purchaser, with the approval of the Board, in either instance, shall give notice to the Contractor as to such failure, and the Contractor shall not, within fifteen (15) days after being so notified, correct any failure to use due diligence or undertake the performance of said covenants, undertakings, or agreements required to cure such failure, and

thereafter prosecute in good faith to completion all such work or performance required to cure such failure.

(c) The Contractor being dissolved or adjudged a bankrupt or making a general assignment for the benefit of its creditors, or the appointment of a receiver or receivers of any kind whatsoever, whether or not appointed in bankruptcy, common law or equity proceedings, whether temporary or permanent, for the property of the Contractor, or the filing by the Contractor of a petition for reorganization or other proceedings with reference to the Contractor, under any of the provisions of the Bankruptcy Act, or the filing of such petition by creditors and approval thereof by the Court, whether proposed by a creditor, a stockholder or any other person whatsoever.

(d) The occurrence of any other event (except an event for which the Contractor would be entitled to an extension of time for completion under the provisions of ARTICLE VI of the Construction Contract) not contemplated by this Contract or the Construction Contract which, in the opinion of the Board, would make it impossible for the Contractor to carry out its obligations under this Contract.

ARTICLE 18. *ACTION BY PURCHASER AND BOARD UPON DEFAULT*

(a) In the event that any one or more of the events of default specified in the Article 17 of this Contract shall have occurred, the Purchaser and the Board, if they so elect, may terminate this Contract. The Purchaser and the Board may then, if they so elect, proceed to have the work on the Vessel completed and for such purpose may take possession and use and occupy so much of the Contractor's Shipyard, plant, equipment, tools, machinery, and appliances, as may be needed for such purposes, without the payment of any rental or other charge there-

for to the Contractor. Contractor hereby agrees to assure to the Purchaser and the Board so long as it has the legal right to do so, such use and occupancy of the said facilities and said other property of the Contractor for such period of time as may be necessary for the completion of the contract work.

(b) In the event of termination under this Article, and if the Purchaser and the Board shall elect to have all or part of the contract work completed, the Contractor shall (i) assign such subcontracts and orders for material, services, and supplies to be used in the performance of said contract work to the Purchaser and the Board as the Purchaser and the Board may direct, and (ii) pay to the Purchaser and the Board the amount by which the total cost of the Purchaser and the Board of completing said work (including all amounts paid to the Contractor hereunder) exceeds the total Contract Price and the cost of National Defense Features provided in this Contract, as adjusted hereunder; provided, however, that in computing the amount, if any, to be paid by the Contractor to the Purchaser or the Board, appropriate adjustment shall be made for changes in the contract work subsequent to the termination of the Contract.

(c) In the event of the termination under this Article, and if the Purchaser and the Board shall elect not to complete the Vessel, the Purchaser and the Board, at any time within one hundred and twenty (120) days from the date of termination hereunder, may sell the partially completed Vessel, work-in-progress, materials, articles of machinery, outfit and equipment and supplies, together with all plans, specifications, calculations and other records required for the construction or equipment thereof. The sale shall be made free from any equity of redemption and without appraisement or valuation and shall be conducted in the manner determined by the Board. Any purchaser at any such sale shall be given reasonable time,

not less than sixty (60) days from the date of sale, within which to remove from the Contractor's plant the Vessel, work-in progress, materials, articles of machinery, outfit, equipment and supplies purchased. The Board or the Purchaser may become a purchaser at such a sale. The proceeds of the sale shall be applied, first, to payment of all costs and expenses, including reasonable attorney's fees incurred by the Purchaser and the Board or their assigns in making such sale; secondly, to reimbursement of the Purchaser and the Board for payments theretofore made by the Purchaser and the Board to the Contractor on account of the Vessel; and thirdly, to payment of any damages, demands or deficiencies arising by reason of default of the Contractor. The remaining proceeds, if any, shall be paid over to the Contractor. In the event the proceeds of the sale shall not be sufficient to pay the first, second and third items, as above set forth, the difference shall be paid to the Purchaser and the Board by the Contractor or the Contractor's surety or sureties.

(d) The rights conferred upon the Purchaser and the Board under the terms of this Article shall be in addition to, and not in substitution of, any rights which the Purchaser or the Board would have in either law or equity upon the happening of the events of default specified herein. The failure of the Purchaser and the Board to exercise the rights conferred upon them hereunder in any one or more instances of the occurrence of an event of default, as hereinbefore defined, shall not constitute a waiver of the right subsequently to terminate this Contract, as herein provided.

ARTICLE 19. *FEES*

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a

commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Board shall have the right to annul this Contract without liability, or in its discretion to deduct from the Contract Price or consideration the amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 20. *ASSIGNMENT OF CLAIMS*

Claims for moneys due or to become due the Contractor from the Board under this Contract may be assigned, pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), to a bank, trust company, or other financial institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable by the Board under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party or trustee for two or more parties participating in such financing.

ARTICLE 21. *OFFICIALS NOT TO BENEFIT NOR BE EMPLOYED*

No member of, or delegate to, Congress, or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit. No member of, or delegate to Congress, or Resident Commissioner, shall be employed by the Contractor, either with or without compensation, as an attorney, agent, officer or director.

ARTICLE 22. *LABOR PROVISIONS*

(a) In connection with the performance of work under this Contract and the Construction Contract, the Contractor shall comply with the regulations of the Secretary of Labor made pursuant to the Anti-Kickback Act of June 13, 1934, 48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. 874; 40 U.S.C. 276c and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions from the requirements thereof.

(b) The Contractor shall insert in each of its subcontracts the provisions set forth in paragraph (a) of this Article and such other agreements as the Board may, by appropriate instructions, require.

(c) A breach of the provision set out in paragraphs (a) and (b) above shall be grounds for termination of this Contract.

ARTICLE 23. *WORK HOURS ACT OF 1962—OVERTIME COMPENSATION*

(a) Neither the Contractor nor any subcontractor contracting for any part of the work under this Contract or the Construction Contract shall require or permit any laborer or mechanic to be employed on such work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half ($1\frac{1}{2}$) times his basic rate of pay for all hours worked in excess of eight (8) hours in any

calendar day or in excess of forty (40) hours in such work week, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provision of paragraph (a), the Contractor and any subcontractor responsible for such violation shall be liable to any affected employee for his unpaid wages. In addition, such Contractor or subcontractor shall be liable to the United States for liquidated damages. Said liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a), in the sum of ten dollars ($10) for each calendar day on which such employee was required or permitted to work in excess of eight (8) hours or in excess of forty (40) hours in a work week without payment of the required overtime wages.

(c) The Board may withhold, or cause to be withheld, from moneys payable on account of work performed by the Contractor or subcontractor, the full amount of wages required by this Contract and such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in paragraph (b).

ARTICLE 24. *EQUAL EMPLOYMENT OPPORTUNITY*

During the performance of this Contract and the Construction Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Board setting forth the provisions of this nondiscrimination paragraph (a).

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Board, advising the said labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules and regulations of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Board and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Article or with any of said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended, in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rules, regulations or orders of the Secretary of Labor or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Board may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Board, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 25. *SMALL BUSINESS CONCERNS*

It is the policy of the Federal Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns. Therefore, in performing the contract work under this Contract and the Construction Contract, the Contractor agrees to use

its best efforts to accomplish the maximum amount of contracting and subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this Contract and the Construction Contract.

ARTICLE 26. *UTILIZATION OF MINORITY BUSINESS ENTERPRISES*

(a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this Contract. As used in this Contract, the term "minority business enterprise" means a business, at least fifty per cent (50%) of which is owned by minority group members or, in case of publicly-owned businesses, at least fifty-one per cent (51%) of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

ARTICLE 27. *MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM*

(a) The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in ARTICLE 26 of this Contract) to be con-

sidered fairly as subcontractors and suppliers under this Contract. In this connection, the Contractor shall—

(i) Designate a liaison officer who will administer the Contractor's minority business enterprises program.

(ii) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make-or-buy" decisions.

(iii) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.

(iv) Maintain records showing (1) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (2) awards to minority business enterprises on the source list, and (3) specific efforts to identify and award contracts to minority business enterprises.

(v) Include the Utilization of Minority Business Enterprises clause in subcontracts which offer substantial minority business enterprises subcontracting opportunities.

(vi) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct.

(vii) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (iv), above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed $500,000, provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Board of the names of such subcontractors.

ARTICLE 28. *PROHIBITION AGAINST THE USE OF CONVICT LABOR*

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

ARTICLE 29. *EXAMINATION OF BOOKS AND RECORDS*

(a) The books, files and other records of the Contractor and of any holding, subsidiary, affiliated or associated company which contain information pertinent to this Contract or the Construction Contract shall, until the expiration of three (3) years after final payment, be subject to inspection and audit by representatives of the Board.

(b) In accordance with Section 502(a) of the Act, the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment, have access to and the right to examine any pertinent books, documents, papers and records of the Contractor. The Contractor shall include in each subcontract negotiated relative to the Construction Contract, a provision giving the Comptroller General, until three (3) year [sic] after final payment, access to and the right to examine any pertinent books, documents, papers, and records of the subcontractor related to the negotiation or performance of such subcontract.

(c) For the purposes of this Article, the term "final payment" shall mean final resolution or settlement of all claims, rights and liabilities, disputes, lawsuits or other proceedings arising under this Contract or the Construction Contract.

ARTICLE 30. *RENEGOTIATION*

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (U.S.C. App. 1211, et seq.), as amended, and to any subsequent acts of Congress providing for the renegotiation of contracts. Nothing contained in this Article shall impose any renegotiation obligation with respect to this Contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this Contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this Article, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended, or as subcontracts are defined in such other act.

ARTICLE 31. *DISPUTES*

Any dispute between the parties to this Contract concerning any question of fact under this Contract which is not disposed of by agreement shall be subject to the provisions of this Article. The Contractor may initiate a dispute by transmitting a letter to the Chief, Office of Ship Construction setting forth in detail the matters in dispute. The Chief, Office of Ship Construction or his duly authorized representative shall review the Contractor's transmittal and shall make every reasonable effort to reach agreement with the Contractor resolving the matters in dispute. If, after ninety (90) days from the date the Chief, Office of Ship Construction receives Contractor's letter initiating the dispute, any matters raised by Contractor's letter remain in dispute, the Chief, Office of Ship Construction shall forthwith notify the Board that a dispute is pending and shall forthwith transmit to the Board a written statement of the matters remaining in dispute. Upon receipt of such written statement, the Board or its duly authorized representative shall request from the Contractor and the Chief, Office of Ship Construction written statements of position on each matter in dispute, and any other information which the Board or its duly authorized representative deems necessary. Upon submission of the statements of position or any time thereafter, the Contractor or the Chief, Office of Ship Construction may request a hearing or the Board may, on its own motion, designate the matter or matters for hearing. In the event of such request or designation, both parties shall be afforded the opportunity to be heard and to present evidence before the Board or its duly authorized representative. The determination of the Board on each matter in dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith or not supported by substantial evidence; provided, that if the Secretary of Commerce undertakes to review the Board's determination, the Secretary's review decision shall have the finality prescribed above for the Board's determination.

ARTICLE 32. *VALUE ENGINEERING*

(a) The Contractor may submit to the Purchaser and the Board a proposal, designated as a value engineering proposal, for a modification in the Plans and Specifica-

tions incorporated in this Contract to cover a change in the contract work or material upon the basis that the changed work or material will produce substantially as satisfactory a Vessel as the work or material called for in the Plans and Specifications. The Contractor's proposal shall be accompanied by an estimate of: (i) the decrease in the estimated cost of the contract work resulting therefrom; (ii) the probable delay, if any, in delivery of the Vessel resulting therefrom and (iii) the time by which a change order adopting the proposal must be issued to secure said estimated decrease in the cost of the contract work and change in delivery date, if any.

(b) The submission of a value engineering proposal to the Purchaser and the Board by the Contractor shall in no way affect or modify the contract obligations of the Contractor to perform the contract work in strict accordance with the Plans and Specifications and to effect all deliveries in accordance with the terms of this Contract, except to the extent that a value engineering proposal is included as a change in the Plans and Specifications.

(c) The Purchaser and the Board shall make every reasonable effort to expedite their analyses of any value engineering proposal submitted by the Contractor within the time specified herein, provided, however, the Purchaser and the Board shall have no liability to the Contractor under this Contract or otherwise for any delay in taking action upon a value engineering proposal submitted by the Contractor or for any failure to take action upon the results of any such analyses.

(d) The Board shall determine whether such proposal qualifies as a value engineering change. If, prior to submission by the Contractor, the value engineering proposal has been set out in a Maritime Administration Value Engineering Informational Letter, the Contractor's proposal shall be considered to be a "non-essential" change request and handled in accordance with Article IV of this Contract.

(e) In the event the Purchaser desires to adopt all or part of a value engineering proposal, the Purchaser may direct a change in the Plans and Specifications under Article IV of this Contract; and the Purchaser shall determine the estimated reduction in contract costs allocable to such value engineering change and as to such reduction in contract costs the Contract Price shall be reduced by an amount equal to fifty percent (50%) thereof. Notwithstanding the provisions otherwise made in this Contract for payments and credits as to the Purchaser and the Board, the Purchaser's share of the Contract Price shall be reduced by the full amount of such reduction and the Board's share of the Contract Price shall not be decreased, as the result of a value engineering change being incorporated in the Plans and Specifications.

(f) To the extent the Contractor's value engineering proposals or parts thereof are accepted as value engineering changes and are embodied in a direction for a change in the Plans and Specifications pursuant to Article IV of this Contract, the Purchaser or the Board may apply any such proposals or parts thereof in the construction of other vessels under other contracts without any obligation to make payment to the Contractor for such use.

IN WITNESS WHEREOF, the United States of America, represented as aforesaid, has caused this Contract to be executed on its behalf in three counterparts, on the 30th day of June, 1972, and Seatrain Shipbuilding Corp. has caused this Contract to be executed on its behalf in three counterparts, on the 30th day of June, 1972, with the intent that each counterpart shall have full force and effect independent of the others, but full performance of one shall be full performance of all.

ATTEST:

/s/ [Illegible]
[ILLEGIBLE]
Ass't Secretary,
Maritime Subsidy
Board

ATTEST:

/s/ Mary Baker
MARY BAKER
Ass't Secretary

UNITED STATES
OF AMERICA
SECRETARY OF
COMMERCE

MARITIME SUBSIDY
BOARD

By /s/ [Illegible]
[ILLEGIBLE]
Chairman
SEATRAIN
SHIPBUILDING
CORP.

By /s/ [Illegible]
[ILLEGIBLE]
Vice President

Approved as to Form:

/s/ [Illegible]
[ILLEGIBLE]
Assistant General Counsel
Maritime Administration

Certificate as to execution by Contractor:

I, Mary Baker, certify that I am the Assistant Secretary of the company named as Contractor in the within Contract, and that Richard Sturtz, who signed the said Contract on behalf of the Contractor was then Vice-President of the said corporation; that I know his signature and that his signature thereto is genuine and that said Contract was duly signed, sealed, and attested for and on behalf of said corporation by authority of its governing body.

/s/ Mary Baker
MARY BAKER
Ass't Secretary

EXHIBIT B

MARITIME SUBSIDY BOARD
U.S. DEPARTMENT OF COMMERCE

CONTRACT MA/MSB-165

BETWEEN THE MARITIME SUBSIDY BOARD AND POLK TANKER CORPORATION

THIS CONTRACT, entered into as of the 30th day of June 1972, by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the SECRETARY OF COMMERCE, acting by and through the MARITIME SUBSIDY BOARD (said Secretary of Commerce acting by and through the Maritime Subsidy Board being herein called the "Board") and POLK TANKER CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Purchaser"):

WITNESSETH:

WHEREAS:

1. Pursuant to Sections 501(a) and 504 of the Merchant Marine Act, 1936, as amended (hereinafter referred to as the "Act"), all of the applicable requirements of Title V of the Act, and other applicable provisions of law, the Purchaser, a citizen of the United States, has made application to the Board (which term shall mean the Maritime Subsidy Board or its duly authorized representative, or the Assistant Secretary for Maritime Affairs or his duly authorized representative, as the case may be), for a construction-differential subsidy to aid in the construction of one (1) single screw steam propulsion bulk oil tanker, MA design T10-S-92a vessel (hereinafter called the "Vessel") to be constructed under Contract No. MA/MSB-163 (hereinafter called the "Construction Contract"), for the Purchaser and to be used in the foreign commerce of the United States; and

2. The Board has determined that (a) the Plans and Specifications call for the construction of a vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for National Defense or military purposes in time of war or national emergency; (b) the Pur-

chaser possesses the ability, experience, financial resources, and other qualifications necessary for the operation and ~~maintenance of the~~ proposed new Vessel; and (c) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of the Act; and

3. The Board has submitted the Plans and Specifications for the construction of the Vessel to the Department of the Navy and has received the required approval thereof; and

4. The Purchaser, in accordance with Sections 502 and 504 of the Act, has negotiated with the Contractor for the construction of the proposed Vessel in accordance with the Plans and Specifications; the Contractor has submitted a price for the construction of the Vessel; the Board considers such price to be fair and reasonable and has approved such price; the Board and the Contractor are simultaneously herewith entering into construction-differential subsidy Contract No. MA/MSB-165 providing for the payment of a construction subsidy determined in accordance with Sections 502 and 504, and payment of the cost of National Defense Features; and by the Construction Contract the Purchaser has agreed to pay the remainder of the Contract Price in accordance with Section 504 of the Act.

NOW THEREFORE, in consideration of the premises and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *PAYMENT OF CONSTRUCTION-DIFFERENTIAL SUBSIDY AND COST OF NATIONAL DEFENSE FEATURES*

(a) The contract price (hereinafter called the "Contract Price") for the construction of the Vessel under the Construction Contract shall be $62,872,000.00. There

shall be payable in addition to the Contract Price the sum of $57,700.00 for National Defense Features. The Board shall pay to the Contractor, in accordance with the provisions of Construction-Differential Subsidy Contract MA/MSB-164 with the Contractor, the sum of $57,700.00 as such sum may be adjusted under Article 8 of said Contract MA/MSB-164, for the cost of all National Defense Features and, in addition, a construction-differential subsidy (determined in accordance with Section 502 of the Act) in the sum of $27,017,500.00, which amount is equal to 42.97 per cent of the Contract Price, as such sum may be adjusted under Articles 1(b) and 1(c) of this Contract. The balance of the Contract Price shall be paid to the Contractor by Purchaser under the terms of the Construction Contract.

(b) The Board shall also pay to the Contractor as construction-differential subsidy 42.97 per cent of any increase in the Contract Price determined by the Board under Article 3 of this Contract to be eligible for subsidy participation; provided, however, that in the event there is a decrease in the Contract Price due to a change in the contract work or other reason, the Board's obligation to the Contractor shall be reduced by 42.97 per cent of the amount of the decrease. Progress payments of the Board's portion of any increase in Contract Price due to a change under the Construction Contract shall be governed by Article 3(b) of this Contract.

(c) The Board shall pay to the Purchaser as construction-differential subsidy 42.97 per cent of the Purchaser's cost, not exceeding for subsidy purposes the total sum of $70,000.00, for the plan approval and inspections (including architectural and engineering services together with related travel, reproduction and communication expenses) required for the construction of the Vessel and furnished by Purchaser; provided that such costs shall be subject to audit by the Board, and provided further

that the cost of Purchaser's design work, plan approval and inspections eligible for subsidy shall not include salaries or expenses of officers or employees of the Purchaser which would be paid out of the Purchaser's administrative overhead independently of the construction work and shall not include costs incurred by assignment of ship officers and crew as inspectors of construction unless ap~~proved by the Board.~~

ARTICLE 2. *WITHDRAWAL FROM STATUTORY FUNDS*

(a) The Board hereby authorizes the Purchaser to withdraw from its Capital Construction Fund an amount equal to the Purchaser's portion of the cost of the Vessel approved by the Board for construction-differential subsidy, less any trade-in allowance payable to the Contractor, and, to the extent authorized by the Capital Construction Fund Agreement, amounts for any additional capital costs incurred by the Purchaser in connection with the construction of the Vessel.

(b) Unless otherwise determined by the Board, the proceeds of the construction or permanent loan financing obtained with respect to the Vessel and insured under Title XI of the Act shall be deposited in the statutory fund from which Purchaser has made withdrawals as authorized in paragraph (a), in the amount of the withdrawals so made.

ARTICLE 3. *CHANGES*

(a) No change in the contract work under the Construction Contract shall be aided with subsidy unless the Purchaser notifies the Board in writing of its intention to request subsidy for the change. The Purchaser shall submit its request for subsidy within 45 days (or such longer period as the Board may approve) after a change is proposed or directed giving the reasons for and the advantages of the change. The Purchaser shall, at

the same time, submit the Contractor's detailed estimate of the major components of cost of such change, including labor, materials, engineering and overhead; of the effect on weight, moments and centers; and of the delay in delivery of the Vessel anticipated as a result of the change, together with a description of any completed work eliminated or modified and any acquired materials which would not be used and the effect, if any, of the proposed change upon any guarantee under the Construction Contract. The Purchaser shall also submit any agreement with the Contractor as to the cost and delay attributable to the change. Upon consideration of the Purchaser's request, the Board in its discretion shall approve or disapprove the change for subsidy unless the change involved arises under Article IV(b)(i) of the Construction Contract in which case the Board shall approve the change for subsidy. The Board in its discretion may approve the change for subsidy participation upon the basis of an amount equal to an adjustment in the Contract Price for the Vessel as agreed to by the Purchaser and Contractor or upon the basis of such lesser amount as the Board may determine to be fair and reasonable.

(b) In the event that the Board elects to subsidize a change, the Board's obligation to make periodic progress payments shall be increased accordingly, provided that any increase in the level of progress payments due to a change occurring prior to a determination of the Board to subsidize the change shall be for the sole account of the Purchaser and the Board's portion, if any, of the increase in progress payments made shall be remitted directly to the Purchaser.

(c) In the event any change results in a decrease in the cost of the contract work, the Purchaser shall submit to the Board the Contractor's detailed estimate of and/or the Purchaser's and Contractor's agreement as to the decrease in the cost of the contract work resulting from

the change. Upon consideration of the Contractor's detailed estimate and/or the agreement, as well as other available cost and price data, the Board shall, for the purpose of subsidy only, determine the amount of the decrease in the Contract Price resulting from the change. The Board's obligation to pay subsidy and the Board's obligation to make progress payments shall be decreased by 42.97 per cent of such decrease in Contract Price.

(d) The Board shall have the right to determine for subsidy purposes whether any change or direction by the Purchaser regarding performance of the contract work, which is accepted by the Contractor as a no-cost development or a no-cost change, results in a decrease in the cost of the contract work. If the Board determines that any such change or direction does result in a decrease in the cost of the contract work, the Board's obligation to pay subsidy and the Board's obligation to make progress payments shall be reduced by 42.97 per cent of such decreased costs.

ARTICLE 4. *RIGHTS OF PURCHASER AND BOARD WITH RESPECT TO ENGINEERING AND DESIGN DATA*

(a) All design and engineering data furnished to the Contractor by the Purchaser shall be the sole property of the Purchaser, and all such data furnished to the Contractor by the Board shall be the sole property of the Board. The use or reuse of said design and engineering data by the Contractor shall be governed by the Purchaser or the Board as their interests may appear.

(b) All plans, including working plans (including reproducibles) and such other specified design and engineering data, required to be furnished to the Purchaser by the Plans and Specifications and produced by the Contractor in the performance of the Construction Contract, shall

be the sole property of the Purchaser and the Board, as their interests appear, and the Purchaser or the Board shall have the full right to use the same in such manner as each may deem proper, including without limitation to the generality of the foregoing, the right to make reproducibles and copies, the right to publish, or to withhold from publication and the right to make alterations therein, additions thereto, or other changes. Except as provided in Article 7 of Construction-Differential Subsidy Contract MA/MSB-164 between the Board and the Contractor, the Contractor shall be entitled to recover the reasonable costs of reproduction and handling in the event that the Contractor is required by the Purchaser or the Board to provide copies of such plans, working plans and design and engineering data to the Board, the Purchaser or any designee of the Board or Purchaser. Unless prohibited by provision of law relating to the National Defense or security, the Contractor shall be permitted to retain copies or duplicates of such plans, working plans and design and engineering data for its own official records. The Contractor shall have the right with the approval of the Board to construct a ship or ships built to such plans, working plans and design and engineering data and the Contractor shall have the right with the approval of the Board to transfer such plans, working plans and design and engineering data; provided that neither Purchaser nor Contractor shall be entitled to any fees, commissions or other monetary benefits (except the reasonable costs of reproduction and handling) for such use or transfer.

(c) All design and engineering data, plans and working plans furnished by the Contractor in the performance of the Construction Contract but which were not produced by Contractor in the performance of that Contract shall not become the property of the Purchaser or the Board; provided, however, that the Contractor shall commit to the Board that the Contractor will make such design and

engineering data, plans and working plans available to any party that the Board may from time to time designate in return for the payment by the designated party to the Contractor of a fair and reasonable royalty, license fee, or commission. The Contractor's commitment shall apply to both patented and unpatented design and engineering data, plans and working plans, but shall not apply to design and engineering data, plans and working plans licensed by the Contractor from an unaffiliated third party where the terms of the license prevent such a commitment by the Contractor.

(d) Unless otherwise directed by the Board or the Purchaser, the Contractor shall take reasonable precautions to maintain in confidence all information contained in the Plans and Specifications disclosed to it other than information which is known to it at the time of such disclosures, or which is or shall become available to it from sources other than the Purchaser, the Board, or the Naval Architect of the Purchaser, or which is or shall become obvious to those skilled in the trade to which such information relates. Notwithstanding anything to the contrary hereinabove contained, the Contractor shall not be precluded from disclosing information which may be necessary for the prosecution of the contract work, provided only that in making such disclosure the Contractor shall impose upon any person, firm or corporation to whom such disclosure is made, conditions relating to the confidential treatment thereof to the same effect as those imposed upon it herein; nor shall the Contractor be responsible for unauthorized actions of its employees provided that the aforementioned reasonable precautions have been taken by it as hereinabove provided.

(e) Where the Purchaser furnishes design and engineering data to the Contractor for the construction of the Vessel under the Construction Contract, Purchaser agrees that such design and engineering data will be made avail-

able to the Board or any designee of the Board at a later date upon the request of the Board for use in connection with the construction of other vessels, provided that where the design and engineering data furnished by Purchaser is licensed by the Purchaser from an unaffiliated third party and the terms of the license prevent Purchaser from making the data available to the Board or its designee, the Purchaser need not comply with this paragraph (e). If the preparation of the design and engineering data furnished by the Purchaser in connection with the Construction Contract has been subsidized by the Board, the design and engineering data shall be made available to the Board or its designee without the payment of any fee, commission or other monetary benefit (except the reasonable costs of reproduction and handling). If such preparation has not been subsidized, a fair and reasonable royalty, license fee or commission for the use of such design and engineering data shall be paid.

ARTICLE 5. *INSURANCE*

(a) Commencing with delivery and acceptance of the Vessel, the Purchaser agrees to insure the Purchaser's interest in the Vessel against all marine and war risks and keep the same insured in such amounts and in such forms as the Board may from time to time require. The Purchaser further agrees that, if required by the Board, Purchaser will insure the interest of the Government in the Vessel against the risk of total loss for the period of 20 years commencing with the date of the delivery of the Vessel by the Contractor to the Purchaser, or so long as the Board pays to the Purchaser an operating-differential subsidy in connection with the operation of the Vessel, whichever period is longer. The interest of the Government in the Vessel shall be the amount determined by the Board prior to commencement of any policy year to be attributable to the construction-differential sub-

sidy paid by the Government pursuant to Construction-Differential Subsidy Contract MA/MSB-164 between the Board and the Contractor, and payments made by the Government pursuant to said Contract for the cost of National Defense Features. If, at the commencement of a policy year, the total amount of insurance procurable by the Purchaser in the American and British insurance markets and from the Maritime Administration, to the extent the Administration is authorized to insure under the existing law, is less than the amount of insurance required pursuant to this Article, the insurance secured by the Purchaser for such policy year shall first be applied to cover the interest of the Purchaser and, if the Board shall advise the Purchaser that the interest of the Board should be insured, the balance, if any, of such insurance shall be applied to cover the Board's interest as defined herein.

(b) All insurance required on the Purchaser's interest hereunder shall be taken out in the name of the Purchaser for its account or in the name of and for the account of any person with a security interest in the Vessel and shall provide that the losses payable thereunder shall be paid to the Purchaser or its designee, or to such other person possessing such security interest. All such insurance shall be placed with insurance companies, underwriters, associations, or underwriting funds or firms satisfactory to the Board. During any period in which the Board requires that its interest in the Vessel be insured, the insurance policies covering the Vessel shall provide that, in the event of an actual, constructive or agreed total loss of the Vessel, the underwriters shall pay direct to the Board the amount of the interest of the Government required to be insured for the policy year in which the Vessel is lost.

(c) During any period in which the Board requires that its interest in the Vessel be insured, duplicates of

cover notes and policies (or copies of binders or certificates of entry in lieu thereof) and certificates of entry in protection and indemnity associations in connection with all insurance on the Vessel required hereunder shall be delivered to the Board for approval and custody.

(d) The Purchaser agrees to keep the premium and other charges on all insurance required on the Vessel hereunder fully paid. If the Board requires the Purchaser to insure the interest of the Government in the Vessel, the Board agrees promptly to pay Purchaser an amount equal to those costs paid by the Purchaser in excess of the costs which the Purchaser would have paid if the Purchaser had insured only the Purchaser's interest, as such excess shall be certified to the Board by the Purchaser's underwriter or underwriters.

(e) The Purchaser agrees that it will not do any act, nor voluntarily suffer or permit any act to be done which would cause any insurance to be suspended, impaired, or defeated and will not voluntarily suffer or permit the Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the Vessel to the amount herein provided with insurance satisfactory to the Board for such voyage or the carriage of such cargo.

(f) The Purchaser agrees that nothing in this Contract shall be deemed to limit or restrict in any way the insurance coverage on the Vessel which the United States may require by virtue of the provisions of any mortgage or operating-differential subsidy contract or any other agreement pertaining to the Vessel.

(g) The foregoing provisions of this Article shall run with the title to the Vessel and shall be binding on all owners thereof.

ARTICLE 6. *LIMITATION OF GOVERNMENT MONETARY OBLIGATION; LIABILITY FOR ACTS OF PURCHASER*

(a) Except as provided in Article 7 and Article 8 of this Contract, the grant of construction-differential subsidy and payment for National Defense Features shall be the exclusive monetary obligations of the Government and the Board under this Contract. The Purchaser shall have no recourse under or in any way with respect to this Contract for the consequences of Government priorities, the acts of civil, naval, or military authorities, or other acts or omissions of the Government acting in its sovereign capacity.

(b) Except for the obligation to pay construction-differential subsidy, and the cost of National Defense Features as herein provided, neither the Government nor the Board shall be liable to the Contractor or the Purchaser for any direction, act or omission of the Purchaser made without prior written approval of the Board.

ARTICLE 7. *DEFAULT OF PURCHASER IN CONTRACT PAYMENTS*

(a) In the event Purchaser fails to make a required payment or payments under the Construction Contract, the Contractor may give the Purchaser and the Board written notice of such failure. Unless the Purchaser remedies such failure within fifteen (15) days from the receipt of said written notice or such longer period as may be agreed to by the Contractor, the Contractor may give written notice of the Purchaser's default to the Purchaser and the Board. Within fifteen (15) days after receipt of said notice of default or such longer period as may be agreed to by the Contractor, the Board shall give the Contractor and Purchaser written notice of one of the following:

(i) The Board's election to assume the payments required to be made by the Purchaser under the Construction Contract; or

(ii) The Board's Optional Termination of all contract work pursuant to Article 8 below and Article 15 of Construction-Differential Subsidy Contract MA/MSB-164 with the Contractor.

(b) In the event that the Board assumes the Purchaser's payments pursuant to (a) (i) above, the Board shall promptly pay all of Purchaser's delinquent payments and shall make all future payments as they come due under Construction-Differential Subsidy Contract MA/MSB-164 with the Contractor, and under the Construction Contract.

(c) A copy of the Board's notice to the Contractor, pursuant to (a) (i) or (a) (ii) above shall be delivered to the Purchaser by the Board. As of the date of said notice, all rights of the Purchaser under this Contract and the Construction Contract and all title of the Purchaser in the Vessel and in the contract materials shall vest in the Board. All such vesting of rights and title and the assumption of obligations as provided in (b) above, are made so that the Board may thereafter proceed in the manner it deems best. Such vesting and assumption, however, shall be without prejudice to the rights and obligations as between the Purchaser and the Board.

(d) The provisions of this Article shall in no way restrict or prejudice the right of the Contractor to pursue any remedies it may have with regard to any default of the Purchaser in any of the Purchaser's obligations under the Construction Contract other than payments to be made by the Purchaser.

ARTICLE 8. *OPTIONAL TERMINATION BY THE BOARD*

(a) In the event that the Board exercises its right under Article 15 of Construction-Differential Subsidy Contract MA/MSB-164 with the Contractor to terminate, in whole or in part, its construction-differential subsidy payments to the Contractor, the Board shall pay to the Purchaser the sum of:

(i) all payments made by Purchaser under the Construction Contract for contract work terminated by the Board, including payments for costs determined by the Board to be ineligible for subsidy;

(ii) all payments made by Purchaser for items described in Article 1(c) of this Contract for the design work, plan approval and inspections related to contract work terminated by the Board;

(iii) all expenses of the Purchaser incurred after termination with the express written approval or ratification of the Board in settlement of the Purchaser's outstanding liabilities for items determined by the Board to be either eligible for subsidy or ineligible for subsidy, but capitalizable;

(iv) all payments Purchaser is required to make to the Contractor on account of the Board's termination; and

(v) any other expenses or payments of the Purchaser which the Board in its discretion determines are properly reimbursable.

(b) The Purchaser shall submit its termination claim in the form and with the certification prescribed by the Board no later than one (1) year after receipt of Notice of Termination, unless one or more extensions in writing are granted by the Board upon request of the Purchaser

made in writing within such one-year period or authorized extension thereof.

(c) Any terminated contract work which is continued by agreement of Purchaser and Contractor in accordance with Article 15(a) of Contract MA/MSB-164 shall not be considered contract work within the meaning of this Article.

ARTICLE 9. *DOCUMENTATION AND OPERATION OF THE VESSEL*

(a) The Vessel shall remain documented under the laws of the United States for not less than twenty (20) years from the date of delivery of the Vessel by the Contractor to the Purchaser or so long as there is outstanding a preferred ship mortgage from the Purchaser insured under Title XI of the Act, whichever is the longer period, subject, however, to the provisions of section 611 of the Act.

(b) (i) Purchaser hereby agrees, in accordance with section 506 of the Act, that the Vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the Vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and that if the Vessel is operated in the domestic trade on any of the above-enumerated services, Purchaser will pay annually to the Board that proportion of one twentieth of the construction-differential subsidy paid for the Vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voy-

ages completed during the preceding year; and (ii) Purchaser agrees to comply in all other respects with section 506 of the Act.

(c) (i) Purchaser agrees that the Vessel shall be operated in accordance with all regulations adopted by the Board pursuant to Section 905(a) of the Act governing operation in United States foreign commerce of bulk cargo vessels on which a construction-differential subsidy has been paid, and (ii) the Secretary of Commerce has determined that there are not sufficient U.S. ports to permit safe and commercially feasible trading by the Vessel or by the vessels constructed under the other Multiple Ship Contracts. The Vessel is hereby authorized to engage in the carriage of liquid bulk cargoes between points anywhere in the world. The Purchaser agrees that if the Secretary of Commerce determines that sufficient U.S. ports have become available to permit safe and commercially feasible trading to the United States, the proposed regulations contained in the *Federal Register* of Thursday, March 23, 1972 the "Proposed Regulations" shall apply to the vessel unless the Maritime Administration shall have promulgated regulations under Section 905(a) of the Act which are, in the opinion of the Purchaser, more favorable than the provisions of the Proposed Regulations or the provisions of Section 905(a) shall have been modified so that, in the opinion of the Purchaser, the trading requirements applicable to the vessel shall be more favorable to the Purchaser than the Proposed Regulations. For purposes of determining compliance with the Proposed Regulations, cargo carried by the Vessel and the vessels constructed under the other Multiple Ship Contracts shall be aggregated and compliance shall be determined for all such vessels on an aggregate basis.

(d) The foregoing provisions of this Article shall run with the title to the Vessel and be binding on all owners thereof.

ARTICLE 10. *NATIONAL DEFENSE FEATURES*

(a) The Purchaser agrees that, for the purposes of paragraphs (b) and (c) below, the foreign cost of the National Defense Features incorporated into the Vessel shall be as follows:

(1) Feature	(2) U.S. Cost, per Vessel, of Feature	(3) Foreign Cost, per Vessel, of Feature
Prohibition of Grey Cast Iron	$14,500.00	$ 8,269.00
Fueling at Sea and High Line Transfer	$43,200.00	$24,637.00

provided that in the event the cost of National Defense Features is increased or decreased by reason of a change or changes, the foreign cost of National Defense Features will be adjusted accordingly.

(b) The Purchaser agrees that, with respect to the National Defense Features referred to in paragraph (a) above, the Purchaser will not, at any time during the economic life of the Vessel, alter such Features in a manner which adversely affects their value or utility without the consent of the Board.

(c) The Purchaser agrees that, with respect to the National Defense Features referred to in paragraph (a) above, should the Purchaser, at any time during the twenty (20) year life of the Vessel, utilize any of such Features or should the American Bureau of Shipping and/or the United States Coast Guard, during the same period, amend their rules so as to require incorporation in the Vessel of any of said National Defense Features, the Purchaser shall pay to the Board an amount equal to the foreign cost of the Features utilized or incorporated, depreciated over a twenty (20) year life. Pay-

ment shall be made at the time Purchaser first utilizes any feature or at the time the applicable rules are changed. Payment may be made in a lump sum or in equal annual installments over the remainder of the twenty (20) year economic life of the Vessel. Purchaser liability under this paragraph shall exist only during the first twenty (20) years after delivery of the Vessel by the Contractor.

(d) Purchaser agrees to advise the Board immediately if the National Defense Features referred to above become subject to adjustment as provided herein, and to furnish annually to the Maritime Administration a certificate as to whether these features are used or whether the applicable Coast Guard and/or American Bureau of Shipping rules or certificates have been changed.

ARTICLE 11. *REQUISITION*

(a) It is agreed that in the event that the United States shall, through purchase or requisition, acquire ownership of the Vessel after the completion of the construction of the Vessel, the Purchaser shall be paid therefor the value of the Vessel, but in no event shall such payment exceed (1) the actual depreciated construction cost of the Vessel (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of National Defense Features) less the depreciated amount of construction-differential subsidy theretofore paid by the Board incident to the construction of the Vessel, or (2) the fair and reasonable scrap value of the Vessel, as determined by the Board, whichever is the greater. Such determination shall be final. In computing the depreciated value of the Vessel, depreciation shall be computed on the schedule adopted by the Internal Revenue Service for income tax purposes.

(b) The provisions of this Article shall run with title to the Vessel and be binding on all owners thereof.

ARTICLE 12. *ASSIGNMENT OF CLAIMS*

Claims for moneys due or to become due the Contractor from the Board under this Contract may be assigned, pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), to a bank, trust company, or other financial institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable by the Board under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party or trustee for two or more parties participating in such financing.

ARTICLE 13. *ASSIGNMENT OF CONTRACT RIGHTS*

Except for any assignment made pursuant to Title XI of this Act, the Purchaser may not assign its rights under this Contract or the Construction Contract without the written consent of the Board.

ARTICLE 14. *SALE OR TRANSFER OF THE VESSEL BY THE PURCHASER*

(a) The Purchaser shall not sell or transfer the Vessel within a period of twenty (20) years from the date of delivery of the Vessel by the Contractor to the Purchaser without the prior written approval of the Board nor shall Purchaser enter into a lease, bareboat charter or charter for the Vessel which lease, bareboat charter or charter extends for more than ten (10) years, without such prior written approval. The findings under Sections 501 (a), 502 and 504 of the Act with respect to a ship purchaser's ability, experience, financial resources and other

qualifications necessary for the operation and maintenance of the Vessel shall be the basis for the Board's approval or disapproval.

(b) A sale, transfer, lease or charter (as defined in paragraph (a)) of the Vessel by the Purchaser shall not release the Purchaser from any of its obligations under this Contract or the Construction Contract unless the Board approves such sale, transfer, lease or charter and agrees to release the Purchaser, provided, however, that (i) the agreement of the proposed Purchaser or transferee to be bound by all of the provisions of this Contract, and (ii) the inclusion on any bill of sale or document of transfer of all the restrictions which run with title to the Vessel shall be conditions precedent to the operative effect of any Board approval.

ARTICLE 15. *PATENT INFRINGEMENT*

The Purchaser shall be responsible for any and all claims against the Board for infringement of patents, patent rights, copyrights or trademarks resulting from compliance by the Contractor with any specific written instructions of the Purchaser relating to patent, trademark or copyright matters or from the sale, use or disposition of equipment, machinery or material furnished to the Contractor by the Purchaser.

ARTICLE 16. *VALUE ENGINEERING*

(a) The Contractor may submit to the Purchaser and the Board a proposal, designated as a value engineering proposal, for a modification in the Plans and Specifications incorporated in the Construction Contract to cover a change in the contract work or material upon the basis that the changed work or material will produce substantially as satisfactory a Vessel as the work or material called for in the Plans and Specifications. The

Contractor's proposal shall be accompanied by an estimate of: (i) the decrease in the estimated cost of the contract work resulting therefrom; (ii) the probable delay, if any, in delivery of the Vessel, resulting therefrom and (iii) the time by which a change order adopting the proposal must be issued to secure said estimated decrease in the cost of the contract work and change in delivery date, if any.

(b) The submission of a value engineering proposal to the Purchaser and the Board by the Contractor shall in no way affect or modify the contract obligations of the Contractor to perform the contract work in strict accordance with the Plans and Specifications and to effect all deliveries in accordance with the terms of the Construction Contract, except to the extent that a value engineering proposal is included as a change in the Plans and Specifications.

(c) The Purchaser and the Board shall make every reasonable effort to expedite their analyses of any value engineering proposal submitted by the Contractor within the time specified herein; provided, however, the Purchaser and the Board shall have no liability to the Contractor under this Contract or otherwise for any delay in taking action upon a value engineering proposal submitted by the Contractor or for any failure to take action upon the results of any such analyses.

(d) The Board shall determine whether such proposal qualifies as a value engineering change. If, prior to submission by the Contractor, the value engineering proposal has been set out in a Maritime Administration Value Engineering Informational Letter, the Contractor's proposal shall be considered to be a "non-essential" change request and handled in accordance with Article *IV* of the Construction Contract.

(e) In the event the Purchaser desires to adopt all or part of a value engineering proposal, the Purchaser may

direct a change in the Plans and Specifications under Article *IV* of the Construction Contract; and the Purchaser shall determine the estimated reduction in contract costs allocable to such value engineering change and as to such reduction in contract costs the Contract Price shall be reduced by an amount equal to fifty percent (50%) thereof. Notwithstanding the provisions otherwise made in this contract for payments and credits as to the Purchaser and the Board, the Purchaser's share of the Contract Price shall be reduced by the full amount of such reduction and the Board's share of the Contract Price shall not be decreased, as the result of a value engineering change being incorporated in the Plans and Specifications.

(f) To the extent the Contractor's value engineering proposals or parts thereof are accepted as value engineering changes and are embodied in a direction for a change in the Plans and Specifications pursuant to Article *IV* of the Construction Contract, the Purchaser or the Board may apply any such proposals or parts thereof in the construction of other vessels under other contracts without any obligation to make payment to the Contractor for such use.

ARTICLE 17. *DISPUTES*

Any dispute between the parties to this Contract concerning any question of fact under this Contract which is not disposed of by agreement shall be subject to the provisions of this Article. The Purchaser may initiate a dispute by transmitting a letter to the Chief, Office of Ship Construction, setting forth in detail the matters in dispute. The Chief, Office of Ship Construction, or his duly authorized representative, shall review the Purchaser's transmittal and shall make every reasonable effort to reach agreement with the Purchaser resolving the matters in dispute. If, after 90 days from the date the

Chief, Office of Ship Construction, receives Purchaser's letter initiating the dispute, any matters raised by Purchaser's letter remain in dispute, the Chief, Office of Ship Construction, shall forthwith notify the Board that a dispute is pending and shall forthwith transmit to the Board a written statement of the matters remaining in dispute. Upon receipt of such written statement, the Board or its duly authorized representative shall request from the Purchaser and the Chief, Office of Ship Construction, written statements of position on each matter in dispute, and any other information which the Board or its duly authorized representative deems necessary. Upon submission of the statements of position or at any time thereafter, the Purchaser or the Chief, Office of Ship Construction, may request a hearing or the Board may, on its own motion, designate the matter or matters for hearing. In the event of such request or designation, both parties shall be afforded the opportunity to be heard and to present evidence before the Board or its duly authorized representative. The determination of the Board on each matter in dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence; provided that, if the Secretary of Commerce undertakes to review the Board's determination, the Secretary's review decision shall have the finality prescribed above for the Board's determination.

IN WITNESS WHEREOF, the United States of America, represented as aforesaid, has caused this Contract to be executed on its behalf in three counterparts, on the 30th day of June, 1972, and Polk Tanker Corporation has caused this Contract to be executed on its behalf in three counterparts, on the 30th day of June, 1972, with the intent that each counterpart shall have full force and effect independent of the others, but full performance of one shall be full performance of all.

ATTEST:

UNITED STATES OF AMERICA,
SECRETARY OF COMMERCE
MARITIME SUBSIDY BOARD:

By /s/ Robert J. Blackwell
Chairman

POLK TANKER CORPORATION

By /s/ [Illegible]
President

/s/ [Illegible]
Assistant Secretary,
Maritime Subsidy Board

ATTEST:

/s/ Mary Baker
Ass't. Secretary

Approved as to Form:

/s/ [Illegible]
Assistant General Counsel
Maritime Administration

Certificate as to execution by Purchaser:

I, Mary Baker, certify that I am the Ass't. Secretary of the company named as Purchaser in the within Contract, and that who signed the said Contract on behalf of the Purchaser was then President of the said corporation, that I know his signature and that his signature thereto is genuine and that said Contract was duly signed, sealed, and attested for and on behalf of said corporation by authority of its governing body.

/s/ Mary Baker
Ass't. Secretary

EXHIBIT C

SEATRAIN LINES, INC.
1 Chase Manhattan Plaza
New York, New York 10005

HOWARD M. PACK, *President*

July 8, 1977

Honorable Robert J. Blackwell
Assistant Secretary for
Maritime Affairs
United States Department of
Commerce
Room 3898-B
Washington, D.C.

RE: *Polk Tanker Corporation*

Dear Sir:

Seatrain Shipbuilding Corp. an affiliate of Seatrain Lines, Inc., is owner of the VLCC Stuyvesant, being constructed for Polk Tanker Corporation ("Polk") at the Seatrain shipyard. Polk, on its behalf and that of any successor in interest, as owner or bareboat charterer, hereby requests approval of the Assistant Secretary ("the Secretary") of a time charter with The Standard Oil Company, an Ohio Corporation ("Sohio") for operation of the Stuyvesant in the Alaska (domestic) trade for a period of three years from date of delivery of the vessel. In return, Polk, or such successor in interest, would agree to repay or cause to be repaid, to repay, on a monthly basis during the period of the time charter, an amount which bears the same proportion to the construction-differential subsidy paid by the government to Seatrain Shipbuilding Corp. in respect of the construction of the

Stuyvesant as the period of operation under the time charter bears to the entire life of the vessel. The Secretary is requested to grant this permission pursuant to the discretion vested in him by § 207 of the Shipping Act, 1918, [MMA] as amended ("the Act").

Polk entered in a contract for Construction Differential Subsidy for the Stuyvesant on June 30, 1972. At that time prospects for the employment of the vessel in the foreign trade appeared promising. Polk undertook to build the vessel in the expectation that a long-term charter would become available before completion of the vessel. Since that time, however, circumstances entirely beyond the control of Polk or its affiliates have made such a charter an impossibility. There is, at present, no possible way in which the vessel could be utilized in the foreign trade of the United States. Even if a charter were available, current rates would preclude any return to the vessel for interest payment or amortization.

As the Assistant Secretary is aware, due to the worldwide drop in tanker rates, Polk and its affiliates, including Seatrain Lines, Inc. and Seatrain Shipbuilding Corp. were faced with short-term cash problems which required the temporary closing of the Seatrain Shipyard, and the laying off of substantially all of its employees, and jeopardized the continuation of Seatrain's other operations.

Seatrain's short-term problems were resolved at that time through the negotiation of a loan guaranteed by the Economic Development Administration. That loan guarantee was collateralized in part, by pledges and security derived from the expected value, at completion, of the Stuyvesant. MARAD and the EDA valued the collateral based upon their expected use of the vessel in the Alaska trade.

The vessel was originally financed with $30,200,000 in Title XI insured debt financing. Level semi-annual debt

repayment of $1,528,000 (plus or minus $5,000) commenced November 1, 1975. There is currently $28,845,000 insured indebtedness outstanding on the vessel.

Seatrain Shipbuilding Corp. has outstanding notes payable to banks due in 1980, 1982 and 1983 totalling $77,000,000. The Stuyvesant will be looked to for repayment of half this amount, or $38,500,000.

In order to arrange repayment of this indebteness, substantially all of which is insured by the Department of Commerce, the vessel must be chartered. Seatrain has arranged a three-year time charter to Sohio for use in the Alaska trade at $5.40 per DWT. This time charter will generate a net cash flow sufficient to service the indebtedness on the vessel, including the second mortgage which the vessel would carry as part of a sales transaction, and the annual repayment of the pro rata portion of CDS. In addition it would generate a substantial net cash flow over the three-year charter after debt service and CDS repayment which would be available for deposit in a restricted fund to help ensure debt repayment in years following the expiration of the time charter.

Upon execution and approval of the charter, Polk would negotiate for the sale of the vessel in a leveraged lease transaction. The purchase price is to be approximately $86,000,000; financing will include the existing Title XI debt, an insured second mortgage on the vessel, and the equity owner's cash contribution.

The sale of the vessel by Polk will generate approximately $26 million in cash. Pursuant to the terms of the agreement with the equity owner, this will be placed in an interest-bearing fund to protect the equity owner against loss in the event of default. As the amount required to indemnify the equity owner declines, the amount in the fund will become available to repay the indebtedness on government insured loans, and for the building of reserves for future repayment. Thus virtually all the net

cash proceeds of the charter and the sale will be utilized to retire the government insured indebtedness and reduce the government's exposure to collection on its guarantees.

The Secretary's permission for Polk to utilize the vessel in the domestic trades is necessary for the realization of the charter and the sale revenues. Without the charter no sale is possible.

Conversely, the failure to approve the proposed time charter could trigger a default and subsequent major loss to the government. Unless the Secretary approves the proposed contract amendment, allowing Polk or its successor to utilize the vessel in the domestic trade, Seatrain faces the possibility that it will be unable to continue the repayment of the Title XI insured debt, and will be forced to default on its obligations in this respect. Thus the government faces a situation involving the very real possibility of default with respect to approximately $116,000,000 in debt insured by the Department of Commerce.

In addition to the potential loss to the government if Seatrain defaults, the Seatrain Shipyard would probably be closed. This would result in the loss of over 2,500 jobs in New York City and the loss of a valuable shipbuilding facility. Approximately 85 percent of the yard's work force are members of disadvantaged minority groups. Seatrain's experience with the previous yard closing demonstrates that the vast preponderance of these employees are not readily re-employable and will require government funded benefits.

On the other hand, the yard, if kept open, is a going facility, generating new jobs and productively employing thousands of persons in the generally depressed New York City area. The yard is attracting new orders, and will continue, on a self-sustaining basis, to help carry out

the mandate of Section 101(e) of the Act to maintain efficient facilities for shipbuilding.

The remainder of this memorandum discusses the authority of the Secretary of Commerce to enter into the proposed transaction under 207. The basis of this argument is that the language concerning preservation and improvement of collateral in § 207 is an independent grant of authority which gives the Secretary broad power to protect the government's collateral. In order to invoke this provision of § 207, the Secretary must be faced with a realistic possibility of default, an expected economic loss on default, and an economically viable method for avoiding that default. These circumstances are present here. The Secretary, therefore, has the discretion to avoid a default through the approval of this request.'

I. CONGRESS GRANTED THE SECRETARY SPECIFIC AND INDEPENDENT AUTHORITY UNDER § 207 TO "PROTECT, PRESERVE OR IMPROVE THE COLLATERAL HELD . . . TO SECURE INDEBTEDNESS"

Section 207 of the Act reads, in relevant part, as follows:

> "The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this Act, *or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness*, in the same manner that a private corporation may contract within the scope of the authority conferred by ite charter." [Emphasis added.]

In plain terms, § 207 sets forth a specific grant of authority empowering the Secretary, to "protect, preserve, or improve" its collateral. Under that section, this grant of authority appears wholly apart from the more general reference to the other "activities authorized by this Act,"

and was intended by Congress as an addition to the authority otherwise available to the Secretary under other provisions of the Act. In fact, in 1938, Congress amended § 207 to explicitly provide for this authority, which was deemed necessary for the sound and efficient administration of the Act and for protection of the government's interests generally. It is precisely in circumstances such as those giving rise to this application that the Secretary's authority under § 207 was designed to be exercised. For unless the Secretary acts to preserve and improve its collateral in these circumstances, the government could incur substantial liabilities on its loan guarantees.

On the other hand, the approval requested here will clearly protect and improve the Secretary's collateral. The vessel must, in the immediate future, be used in the domestic trade. Currently available foreign charters would not make the government whole in the event of default. The vessel's value, and therefore the government's collateral, depends on its operation in the domestic trade; the charter for which approval is sought will therefore not only protect the government's collateral by preventing a default, but will improve it to the point where the government will have to face neither the prospect of a laid-up, unchartered asset, nor a protracted default proceeding.

The legislative history of § 207 underscores the importance attached by Congress to this specific and independent grant of authority for the preservation of collateral. In its Report, the Senate Committee on Commerce explained the amendment to § 207 as follows:

> "Section 207 of the Act now provides that 'the Commission may enter into such contracts upon behalf of the United States, as may, in its discretion, be necessary to carry on the activities authorized by this Act, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter'. The amendment adds that it 'may make such disbursements as may, in its discretion be necessary 'to protect, preserve, or improve the collateral held by the Commission to secure indebtedness', as is the practice in the private corporation." S. Rep. No. 618, 75th Cong. 3rd Sess. (1938).

Prior to the 1938 amendments, the Act made no mention of any authority to "protect, preserve or improve" collateral; the Secretary was arguably foreclosed under § 207 from entering into contracts for that purpose. In other words, the "activities authorized by this Act" arguably did not include the preservation of collateral. This was obviously a serious gap in the Secretary's overall authority under the Act. In response, Congress amended § 207 to clearly and unequivocally provide the Secretary the authority to "protect, preserve or improve" collateral. This additional grant of authority was designed to supplement the other "activities authorized by this Act", and to correspondingly enlarge upon the scope of the Secretary's contractual authority.

It is therefore evident from a straight-forward reading of § 207 and its history that it was Congress' intent to supply the Secretary with authority under the Act to protect the government's collateral. Nor was this Congressional intent lost on those courts which have subsequently reviewed § 207, its history and its significance. As the United States District Court for the District of Columbia has stated, upon rejecting a narrow construction of § 207:

> It seems obvious from these reports that the draftsman was in doubt as to whether or not a contract 'to protect, preserve', etc., collateral was within the 'activities authorized by this act' even though the draftsman had so intended it; therefore the amendment addition was in order to make this certain. The scope of authority which may or may not have included such a purpose previously certainly included it thereafter.

> . . . [Plaintiff's contention is] to say that in constructing the word 'preserve', in Sec. 1117 the Court should find the interest of Congress to be that the Commission or any private corporation with like powers must as a rescuer of its collateral sit idly by and watch while all is lost. This does not make sense." *Dollar* v. *Land*, 82 F. Supp. 919, 923, f.n. 1. (D.D.C. 1948), rev'd on grounds that sovereign immunity not applicable, 81 U.S. App. D.C. 28, 154 F.2d 307 (1946) aff'd 330 U.S. 731 (1951).

Similarly, § 207 empowers the Secretary to take the action requested in this application. Pursuant to its authority under that section, the Secretary need not "sit idly by and watch while all is lost."

II. THE LIMITATIONS ON THE SECRETARY'S ACTION UNDER THE GENERAL AUTHORITY OF § 207 ARE NOT APPLICABLE WHEN THE SECRETARY ACTS TO PROTECT, PRESERVE, OR IMPROVE COLLATERAL

On a few occasions the Comptroller General has limited plans to utilize § 207 where there appeared to be a conflict with other provisions of the Act. In none of those cases, however, was the question of the protection, preservation or improvement of collateral in question.

It is not the applicant's contention that § 207 as a whole is a general license to avoid the terms of the Act whenever the Secretary finds it convenient to do so. The Comptroller General has ruled out such an interpretation. The Comptroller General's limitations, however, have been imposed when the Secretary has sought to utilize the general authority of § 207 to make contracts or disbursements "necessary to carry on the activities authorized by this Act" in contravention of other terms of the Act. For example, in the Opinion of the Comptroller General concerning American President Lines, B-135884, 38 Comp.

Gen. 722 (1959), a plan was disapproved whereby the Secretary would, through actions as an escrow agent, undertake liabilities in excess of those authorized by Title XI as then in effect. The justification offered by the Secretary for that undertaking was that it would aid in carrying out the policies expressed in § 101 of the Act. In ruling that the language in § 207 limited the Secretary to activities authorized by the remaining provisions of the Act, the Comptroller General was clearly on firm ground. The language of the first part of § 207 cannot be a mandate for overruling the balance of the Act. Such a reading would leave the remaining language in the Act with little purpose.

Similarly, in 1952 the Comptroller General rejected the Secretary's contention that the Comptroller General could not oversee the activities of the Maritime Administration because of the broad language in § 207 giving the Secretary authority to carry out the policies of the Act. The Comptroller General asserted that the remaining language of the Act limited the Secretary's actions. Against the Secretary's assertion of unfettered license to ignore the Act, it is hard to see how a different result could have issued. The much more narrow authority to protect, preserve, or improve collateral, however, was not in issue. Opinion of the Comptroller General concerning sales under the Merchant Marine Act of 1936. As amended, B-58323, 31 Comp. Genl. 695 (1952).

The language in the Act allowing the Secretary to protect his existing investment suffers no such limitation. By giving that language independent meaning to act in any emergency where the likely alternative could be default, the Secretary is not rendering the remaining language in the Act meaningless; absent a threat to the collateral, the Secretary's actions are limited to the express or implied terms of the Act.

The Comptroller General has recognized the need to give § 207 independent meaning in order to protect the government's collateral. In the Opinion of the Comptroller General concerning the SS Matsonia, B-151860, 43 Comp. Gen. 98 (1963), the Comptroller General found, under the authority of § 207 to protect, preserve and improve collateral, that the Secretary could reschedule debt, notwithstanding language in § 1106 which might have prohibited such an action. The Comptroller General specifically said that under such circumstances the Act must be construed so as to effectuate its policies and purposes, and so as to avoid rendering § 207 meaningless. A similar interpretation is warranted here.

III. CONGRESS INTENDED THAT THE SECRETARY'S CONTRACTUAL AUTHORITY UNDER § 207 BE BROADLY CONSTRUED

Section 207 authorizes the Secretary to contract to "carry on the activities authorized by this Act . . . in the same manner that a private corporation may contract within the scope of the authority conferred by its charter." As the legislative history makes clear, it was Congress' intention that this analogy to the powers of a private corporation be construed as a conferral of the broadest contractual authority. The analogy employed by the drafters was designed to ensure the most expansive reading of the powers granted under § 207. As the House Report on the 1938 amendments stated in analyzing § 207:

> "The amendment (empowering the Commission to 'preserve, protect or improve' collateral) is designed to make clear a power which it is thought already existed in the Commission but about which some doubt has been expressed. Under the Act, the Maritime Commission has all the general and implied powers of a business corporation. H.R. Rep. No. 1268, 75th Cong. 3rd Sess., at 17. (1938)

Furthermore, judicial construction of the authority granted under § 207 has been similarly liberal, reflecting the thoroughly expressed, and commonly understood, legislative intent:

> "First of all as to the power [under § 207] of the Maritime Commission to enter into a transaction of the character it alleges it did, the court holds that it has the power to negotiate and to take absolute title to the stock in question. It was created, from a functional point of view, for the purpose of permitting the conduct of its business in a manner similar to that of private enterprise and free as a consequence of the ordinary inhibitions applied to the regular executive branches of the government.
>
> Its powers in this respect are similar to that of a business corporation." *Dollar* v. *Land*, supra, at 922. (citations omitted).

In short, Congress intended that the analogy to private corporations set forth in § 207 be understood as a broadly gauged grant of power to the Secretary. Congress chose to express its intention through analogy, and it is only as an analogy that the "private corporation" language of § 207 can be properly understood. Furthermore, if correctly viewed as an analogy, § 207 could sustain a restrictive reading only if Congress, in turn, is presumed to have selected an extremely poor and misleading analogy for its purposes. It is a commonplace of modern corporate law that a corporation's powers are too broadly construed, and that, in practice, few corporate acts are beyond "the scope of the authority conferred by its charter." Indeed, the traditional doctrine of *ultra vires*, which traditionally prohibited acts by a corporation beyond the "scope" of its charter, has experienced so steady and complete a decline that "within a few years the subject of *ultra vires* will be of historic value only." N. Lattin, *The Law of Corporations*, § 66 (2d ed., 1971).

Congress surely understood the import of the analogy which it selected, as corroborated by the unqualified emphasis of the legislative history on "all the general and implied powers of a business corporation" which the Secretary was intended to possess under § 207.

IV. THE SECRETARY HAS DISCRETION TO RESOLVE CONFLICTS BETWEEN § 207 AND § 506 OF THE ACT

Polk and Seatrain are seeking the Secretary's approval of a three-year transfer of the Stuyvesant to service in the Alaska trade. A transfer of this duration is required to enable Seatrain to generate the cash needed to service the debt on the Stuyvesant, and to thereby avoid default on its insured loans. Since a default by Polk and Seatrain would trigger government liability on Title XI insured debt, the Secretary's approval of this transfer should lawfully be based on its authority under § 207 to "protect, preserve or improve" collateral.

The Act contains a grant of authority under § 506 allowing the Secretary to consent to the transfer to the domestic trades for periods up to six months per year. Arguably this grant of authority conflicts with the need under § 207 for the three year charter in order to generate sufficient revenue to prevent the default by Polk and Seatrain. This conflict may be more apparent than actual, however.

Previous interpretations of § 506 have found, where economically necessary, implied authority to transfer a vessel to the domestic trades notwithstanding the statutory time limitation, Opinion of the Comptroller General concerning the S.S. Santa Leonor, B-155039, 44 Comp. Gen. 180 (1964). While the statute was admittedly silent on the point, the Comptroller General found that so long as repayment of CDS was provided, the Secretary had

authority to allow transfer of the vessel to the domestic trade. Obviously, then, the time limitations imposed by § 506 do not fully occupy the field, especially where, as both for the Santa Leonor and the Stuyvesant, economic necessity requires a transfer for a longer period of time. The implied authority found by the Comptroller General in 1964 can be equally applicable to an exercise of his authority to transfer a vessel to the domestic trade pursuant to § 207 rather than § 506.

If, however, it is accepted that § 506 does conflict with approval of this charter, then the Secretary must resolve any such conflict in the interest of effective administration of the Act, through a careful weighing of the policies underlying both §§ 207 and 506 in light of the circumstances of the particular case. Conflicts and inconsistencies arise inevitably out of the legislative drafting process, particularly where, as here, the statute in question has undergone various amendments over a forty year history. These conflicts and inconsistencies must be resolved if the Secretary is to discharge its responsibilities under the Act.

Well accepted canons of statutory construction require a resolution which allows § 207 to serve the function intended by Congress. It is axiomatic that provisions within a statute should be construed harmoniously, and should not be permitted effectively to cancel out one another. This has been otherwise stated by the United States Supreme Court as "the rule which requires that a practice which is permitted by one section should not be prohibited upon the theory that it is forbidden by another. *United States of America* v. *Louisville and Nashville Railroad Company*, 235 U.S. 314, 326 (1914). It is a rule widely followed by the courts in matters of statutory construction. *See, R.V. McGinnis Theatres* v. *Video Independent Theatres, Inc.*, 262 F. Supp. 607, 613-614 (N.D. Okla.), *aff'd*, 386 F. 2d 592 (10th Cir. 1967); *In Re Presault*

130 Vt. 343, 292 A.2d 832, 834-835 (Sup. Ct. 1972); *Cooper Motors* v. *Commissioners*, 131 Colo. 78, 279 P.2d 685, 688 (1955).

In some instances, this rule of construction may require that where two provisions of a statute cannot be construed consistently or harmoniously under all circumstances, one such section must be interpreted to prevail or supersede the other under the particular circumstances involved. Since § 506 would conflict with the Secretary's ability to take an action necessary for the preservation of the collateral in this case, § 506 would have to give way to § 207.

An illustration of the approach urged upon the Secretary here can be found in *Commissioner* v. *Credit Alliance Corp.*, 316 U.S. 107 (1941). In that case, the Supreme Court confronted a conflict betwen § 27(f) and 27(h) of the Internal Revenue Act of 1936 governing the application of "dividends—paid credit" to a corporation making distributions in liquidation. The liquidating corporation in *Credit Alliance* was seeking this credit on distributions made to its parent company. Briefly stated, under the clear terms of § 27(f), the liquidating corporation was entitled to a dividends-paid credit on this distribution to its parent company, whereas under the equally clear terms of § 27(h), a dividends-paid credit under these circumstances was prohibited. The Court chose to resolve the conflict in favor of allowing the credit in the particular case before it, and stated as follows:

> "As above said, each of the subsections of § 27 deals with a specific and particular topic. Subsection (f) deals with 'distributions in liquidation' while subsection (h) deals with 'non-taxable distributions'. If (f) applies in this case, (h) is left to cover a substantial field of other sorts of distributions. We should, of course, read the two sections as consistent rather than conflicting, if that be possible. Here, it is not only possible but begets no absurd or impractical result. We hold that (h) is not applicable to the facts of this case and that (f) is." *Commissioner* v. *Credit Alliance Corp.*, *supra*, at 111-112.

The Court's approach in *Commissioner* v. *Credit Alliance Corp.* applies with equal force to the issue presented in this application. Here, if § 207 were viewed as controlling, the result would not be either "absurd or impractical." On the contrary, unless the Assistant Secretary exercises discretion by approving the charter of the Stuyvesant for a three year period, the policy underlying § 207 will be frustrated. Without approval of this charter, the possibility of improving the government's collateral is doubtful.

The exercise of the discretionary authority under § 207, moreover, not only effectuates the policy of improving the government's collateral, but also aids in carrying out the policies set forth in § 101. By protecting the government's collateral under § 207 the government will also assure the continuation of the shipbuilding facility, rather than the potential permanent loss of the facility. The approval would, therefore, not only satisfy the statutory standard of § 207, but the broader policies underlying the Act as well.

CONCLUSION

Section 207 confers upon the Secretary specific and independent authority to "preserve, protect or improve" the government's collateral. Congress intended this authority to be exercised in circumstances such as those present here, where there is a genuine and immediate threat to the government's collateral, but also an economically viable approach to the protection of that endangered collateral, as outlined above. If, under these circumstances, the Secretary is deemed powerless to act under § 207, the expressed Congressional mandate under-

lying that section would have little practical meaning or significance. For these reasons, Polk requests that the Secretary approve its proposed time charter with Sohio for operation of the Stuyvesant in domestic trade for a period of three years.

/s/ Howard M. Pack
HOWARD M. PACK

EXHIBIT D

POLK TANKER CORPORATION
1 Chase Manhattan Plaza
New York, New York 10005

August 25, 1977

Mr. James S. Dawson, Jr.
Secretary
Maritime Administration/
Maritime Subsidy Board
Washington, D.C. 20230

Dear Mr. Dawson:

The purpose of this letter is to formalize the application of Polk Tanker Corporation ("Polk") as previously discussed with representatives of the Maritime Administration (1) to permit the repayment to the United States, under terms outlined below, as of the date of delivery of the steam propulsion oil tanker STUYVESANT (MA Hull No. 102, the "Vessel") of the amount of construction-differential subsidy and national defense features paid or to be paid by the United States to Seatrain Shipbuilding Corp. (the "Contractor") under Construction-Differential Subsidy Contract No. MA/MSB-164 entered into between the United States and the Contractor as of the 30th day of June, 1972; and (2) to authorize amendment of Title V Contract No. MA/MSB-165, entered into between the United States and Polk as of the 30th day of June, 1972, to release Polk from the restrictions, obligations and duties therein, except those contained in (i) Article 4, pertaining to the right of the United States to the engineering and design data for the vessel; and (ii) Article 11, pertaining to the purchase and requisition right of the United States to the vessel pursuant to Section 802 of the Merchant Marine Act, 1936, as

amended: it being understood that with respect to the compensation formula contained in Article 11, the amount of construction-differential subsidy repaid with interest shall be considered in the calculation of compensation.

Cancellation of the Title V Contract would permit the operation of the Vessel in the Alaska (domestic) trade without further permission from the United States.

Under arrangements now being made, at or immediately prior to the time of delivery of the Vessel by the Contractor, title thereto will be passed to United States Trust Company of New York (the "Owner Trustee"), not in its individual capacity, but as trustee under a trust agreement with General Electric Credit Corporation ("GECC") the Owner Participant. The Owner Trustee will then bareboat charter the Vessel to Queensway Tankers, Inc. ("Queensway"), and Queensway will time charter the Vessel to Sohio Petroleum Company, a wholly-owned subsidiary of The Standard Oil Company (Ohio) ("Sohio"), for use in the Alaska (domestic) trade.

Repayment of the construction-differential subsidy would be accomplished as follows:

1. Polk will execute a promissory Note (the "Note") payable to the United States in the amount of approximately $27,200,000.00 representing the aggregate amount of construction-differential subsidy and national defense features paid by the United States to the Contractor toward the construction of the Vessel with interest thereon at the same rate borne by the second tier of Title XI Debt from the date of execution. The Note will be payable in forty (40) level semi-annual installments of combined principal and interest commencing six (6) months from the date of the Note. The Note will be assumed by the Owner Trustee in connection with the purchase of the Vessel from Polk or immediately prior to its delivery from the Contractor and Polk will be released from its

obligations thereunder. The Note will be an obligation of the Owner Trustee under the Trust Agreement with GECC but will not be an obligation of the Owner Trustee in its individual capacity or of GECC. The Note will be secured by a Preferred Ship Mortgage on the Vessel to be given by the Owner Trustee in favor of the United States which will be subject and subordinate to a First Preferred Mortgage and Second Preferred Mortgage to be given by the Owner Trustee to secure obligations insured and/or guaranteed under Title XI of the Merchant Marine Act, 1936, as amended, in connection with financing the Vessel.

2. The Note will also be secured by Owner Trustee's interest in (a) the bareboat charter; (b) the Time Charter Assignment; and (c) the Seatrain Security Agreement, all of which will be assigned by the Owner Trustee to the United States. Under the terms of the Seatrain Security Agreement among Seatrain Lines, Inc., the Owner Trustee and The Chase Manhattan Bank, N.A., as depository, and the United States (under the second tier of Title XI debt and the Note) a collateral account ("Seatrain Security Fund") will be maintained by The Chase Manhattan Bank, N.A., as depository, to secure the performance by Queensway of its obligations under the bareboat charter. The rights of the Owner Trustee under the Seatrain Security Agreement will be assigned by the Owner Trustee, as security to the United States (under the second tier of Title XI Debt), and to the United States (to secure repayment on the Note). The deposits by Seatrain in the Seatrain Security Fund will be made from monies which Seatrain Lines, Inc. becomes entitled to receive under its credit agreement with Chase from a cash collateral deposit to be maintained by Seatrain with Chase (as issuer of a Letter of Credit in favor of GECC) to secure Seatrain's reimbursement obligations to Chase in respect of the said Letter of Credit.

3. All amounts which Seatrain Lines, Inc. becomes entitled to receive under its credit agreement with Chase as aforesaid shall be deposited in the Seatrain Security Fund until such time as the aggregate sum in the Title XI Reserve Fund and the Seatrain Security Fund is equal to fifty percent (50%) of the outstanding balances of the first and second tier of Title XI Debt and fifty percent (50%) of the outstanding balance of the Note; any excess of such amount shall be paid from the Security Fund to Seatrain Lines, Inc.

4. If on any date for the payment of Basic Hire under the bareboat charter Queensway has not (either from hire under assigned subcharters or from its other funds) made such payment in full, the United States shall have the right to withdraw or direct the withdrawal of the amount of the shortfall from the Seatrain Security Fund and apply it to the making of such payment. If there is no debt outstanding of the first and second tier of Title XI Debt, the United States (acting in respect of the Note) will be entitled to the same right. In addition, the United States will be able to draw upon the full amount of the Seatrain Security Fund in the event there has been a demand for payment under the guarantees in respect of the second tier of Title XI debt or if there has been acceleration of the Note. The United States will agree that, to the extent that there are not sufficient monies (not including monies in the Seatrain Security Fund) otherwise available to Queensway to enable it to make any payments of Basic Hire under the bareboat charter, Queensway may make withdrawals from Title XI Reserve Fund to the extent necessary to enable it to make such payments with the prior written approval of the United States.

5. All Title XI Reserve Fund Net Income of Queensway shall be deposited into the Title XI Reserve Fund until such time as the balance in the Title XI Reserve Fund plus the balance in the Seatrain Security Fund shall equal fifty percent (50%) of the outstanding balance of the First and Second tier of Title XI Debt covering the Vessel; withdrawal may not be made from this fund without the prior written consent of the United States.

6. The Guarantee Fee and the Title XI Insurance Fee on the Title XI Debts shall be at the rate of ¾ of 1% per annum until such time as the United States agrees to reduce the rate to a rate per annum as determined by the Secretary based on Queensway's having obtained a long-term charter acceptable to the United States to justify such a reduction.

7. Seatrain has obtained an undertaking by The Economic Development Administration ("EDA") to subordinate its security interest and proposed mortgage lien on the BAY RIDGE to the security interest and proposed mortgage lien in favor of the United States (Marad) upon receipt by EDA of approximately $28.6M from the proceeds of the STUYVESANT to be applied to reduce its present $40M security interest in the BAY RIDGE.

8. The Seatrain Security Fund shall be released upon the happening of any one of the following conditions:

(a) If Queensway should secure a time charter or contract of affreightment, to an acceptable credit risk as determined by the Secretary, equal to at least ½ of the remaining original term of the bareboat charter wherein (i) the charter hire sufficient to service the Basic Hire of the bareboat charter is paid on a hell-and-highwater basis; (ii) the operating component of the charter hire is sufficient for all operating expenses; and (iii) there is a reasonable profit to Queensway.

(b) If Queensway were to secure a time charter or contract of affreightment meeting all the conditions in (a) above except that it was not for ½ the re-

maining original term of the bareboat charter or the Vessel (*e.g.* say a five (5)-year charter), and if this time charter plus the amount on deposit in the Vessel's Title XI Reserve Fund assured the payout of at least fifty percent (50%) of the outstanding balance of the first and second tier of Title XI Debt and the Note at the end of the charter period.

(c) If the vessel is sold to a buyer possessing acceptable substantial credit to the United States.

(c) [sic] If Queensway were to merge into a company that has sufficient assets (as determined by the United States) to service the first and second mortgages and the Note.

(e) The presence of any other conditions or circumstances which would give the United States security in an amount at least equal to any of the above four (4) conditions.

Very truly yours,

POLK TANKER CORPORATION

/s/ Stephen Russell

EXHIBIT E

POLK TANKER CORPORATION
1 Chase Manhattan Plaza
New York, New York 10005

August 26, 1977

Hon. Robert J. Blackwell
Assistant Secretary for Maritime Affairs
U.S. Department of Commerce
Room 3898-B
Washington, D.C. 20015

Re: Polk Tanker Corporation Buildings Hull No. 102

Dear Sir:

On July 8, 1977, Polk Tanker Corporation made application to you requesting, under Section 207 of the Merchant Marine Act, 1936, as amended, permission to operate the VLCC STUYVESANT, Builders Hull No. 102, in the domestic trade for a period of three years. Notice concerning that application was placed in the Federal Register July 20, 1977. It is our understanding that, to this date, no action has been taken by the Maritime Administration with regard to that application.

By this letter, Polk withdraws that application and requests the Assistant Secretary to take no further action with regard to it.

Very truly yours,

POLK TANKER CORPORATION

/s/ Steve Russell
STEVE RUSSELL

EXHIBIT F

UNITED STATES DEPARTMENT OF COMMERCE
Maritime Administration
Washington, D.C. 20015

August 31, 1977

Polk Tanker Corporation
One Chase Manhattan Plaza
New York, New York 10005

Gentlemen:

For over two years the Maritime Administration has been considering the possibility that at the time of delivery there might be no market for the STUYVESANT other than the movement of Alaskan oil to the lower 48 states. The Economic Development Agency in June 1975 agreed to guarantee additional funding to Seatrain Shipbuilding Corporation to reopen its yard to complete this vessel taking into account the same possibility. In light of the fact that several years of work and negotiations have generated no other opportunities for employment of this vessel, and being persuaded that approval of the proposed CDS repayment and the time charter of the Sohio Petroleum Company will improve the collateral position and prevent possible default on various obligations insured and guaranteed by the Department of Commerce, and failure to approve the proposal would jeopardize continued operation of the Seatrain Shipbuilding Corporation, the Maritime Subsidy Board (Board)/Assistant Secretary of Commerce for Maritime Affairs (Assistant Secretary) with respect to the requests dated July 12, 1977 and August 25, 1977, from Polk Tanker Corporation (Polk) pertaining to the T.T. STUYVESANT, took the following actions on August 30, 1977:

I. By the Assistant Secretary:

A. Approved, pursuant to sections 9, 37 and 41 of the Shipping Act, 1916, as amended (the Shipping Act), the time charter by United States Trust Company of New York, as owner trustee, and Queensway Tankers, Inc., as charter owner, of the tanker Builder's Hull No. 102 (to be documented under U.S. flag and named STUYVESANT), to Sohio Petroleum Company, a Delaware corporation but not a citizen of the United States within the meaning of section 2 of the Shipping Act, for a period of three (3) years commencing on or about the date of Maritime Administration approval, for the carriage of crude oil and/or dirty petroleum products in permissible worldwide trade, upon the conditions: (1) that without the prior written approval of the Maritime Administration the vessel shall not be subchartered to aliens, except as may be permitted by General Order 59, 2d Revision, as amended; and (2) that the operating range of said vessel shall not include the Soviet Union, Latvia, Lithuania, Estonia, Czechoslovakia, Hungary, Bulgaria, Albania, North Korea, the Soviet Zone of Germany, Manchuria, the People's Republic of China, Cambodia, North Vietnam, South Vietnam, Cuba or Southern Rhodesia, unless otherwise permitted by regulations of the Department of Commerce.

II. By the Board:

A. Found, pursuant to section 501(a) of the Merchant Marine Act, 1936, as amended (the Act), that United States Trust Company, as owner trustee and Queensway Tankers, Inc., as charter owner, are acceptable transferees of the T.T. STUYVESANT, subject to both companies demonstrating their U.S.

citizenship, under section 2 of the Shipping Act, to the satisfaction of the General Counsel.

B. Approved, pursuant to Article 14 of Board Contract No. MA/MSB-165, the assignment of the T.T. STUYVESANT to United States Trust Company as owner trustee and the bareboat charter of the vessel to Queensway Tankers, Inc.

C. Authorized the repayment to the United States on the date of delivery of the T.T. STUYVESANT, of the total amount of construction-differential subsidy paid in connection with the construction of the vessel, including the cost of National Defense Features, as determined by the Maritime Administration, in the form of a promissory note issued by Polk and to be assumed by the United States Trust Company as trustee upon purchase of the vessel, payable in level installments of principal and interest, semiannually in arrears for twenty years beginning on the date of delivery of the vessel, provided that:

(1) The note is secured by a preferred ship mortgage on the vessel to be given by the owner trustee in favor of the United States which will be subject and subordinate to a first preferred mortgage and second preferred mortgage to be given by the owner trustee to secure obligations insured and/or guaranteed under Title XI of the Act, in connection with financing the vessel.

(2) The note is also secured by the owner trustee's interest in (a) the bareboat charter; (b) the time charter; and (c) the Seatrain Security Agreement.

(3) All documents related to the repayment of CDS have been found to be satisfactory, in form and substance, to the Office of the General Counsel.

D. Determined that interest is payable on the promissory note authorized in paragraph C above, with interest thereon to be at the same rate borne by the second tier of Title XI debt from date of execution.

E. Authorized the amendment of Board Contract No. MA/MSB-165 to release the vessel owner from all restrictions, obligations and duties contained therein, except those contained in Articles 4 and 11 pertaining to the right of the Board to the engineering and design data for the vessel, and the purchase and requisition rights of the United States to the vessel pursuant to section 802 of the Act, respectively. It shall be understood that with respect to the compensation formula contained in Article 11, the amounts of CDS repaid pursuant to paragraph C above, shall be considered in the calculation of compensation.

F. Authorized the Assistant Secretary of Commerce for Maritime Affairs (the Secretary), on behalf of the Board, to accept or enter into the following documents:

1. Promissory Note from Polk;

2. Novation Agreement among United States Trust Company as owner trustee, Polk and the Secretary;

3. Security Agreement between United States Trust Company as owner trustee and the Secretary; and

4. Preferred Ship Mortgage (Third) between United States Trust Company as owner trustee and the Secretary

in substantially the form submitted, proof date August 25, 1977, or with such changes as the Secretary shall approve and delegated to the Assistant Administrator for Maritime Aids authority to take all actions necessary in connection with the administration of the above mentioned documents.

Your attention is invited to the provisions of Department of Commerce Organization Order 10-8, section 7, and we ask that you indicate your acceptance of the above actions by signing, dating, and returning the enclosed copy of this letter.

Sincerely,

/s/ James S. Dawson, Jr.
JAMES S. DAWSON, JR.
Secretary

Enclosure

EXHIBIT G

UNITED STATES DEPARTMENT OF COMMERCE
Maritime Administration
Washington, D.C. 20230

August 31, 1977

Polk Tanker Company
One Chase Manhattan Plaza
New York, New York 10005

Queensway Tankers, Inc.
110 Wall Street
New York, New York 10005

Gentlemen:

With respect to the proposed sale of the STUYVESANT (Vessel) by Polk Tanker Corporation (Polk) to The United States Trust Company of New York (Shipowner), not in its individual capacity but solely as owner trustee under a Trust Agreement between it and General Electric Credit Corporation (GECC), and the proposed additional bond sale, you are advised that on August 30, 1977, the Assistant Secretary for Maritime Affairs (Secretary) took the following actions:

I. Approved the Shipowner, not in its individual capacity but solely as owner trustee under a Trust Agreement between it and GECC, as lessor under the lease financing arrangement.

II. Found that Cove Shipping, Inc. (Cove) possesses the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the Vessel.

III. Approved Queensway Tankers, Inc. (Queensway) as bareboat charterer and, found pursuant to Section 1104

(b) (1) of the Merchant Marine Act, 1936, as amended (Act), subject to compliance with the requirements herein stated, and the execution of the Management Agreement required below, that Queensway and the Shipowner possess the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the Vessel.

IV. Approved the proposed sale and lease financing arrangement, whereby Polk will assign its rights and obligations under the construction contract for the Vessel to the Shipowner, pursuant to Section 8.01 of the Trust Indenture.

V. Required that the lease terms of the sale and lease proposal be subject to approval by the Maritime Administration including, but not limited to, the lease rate, indemnification, etc.

VI. Found under Section 1104(d) of the Act that the property or project with respect to which the additional guaranteed obligations will be issued remains, in his opinion, economically sound.

VII. Determined, pursuant to Sections 1101(f) and 1104(b) (2) of the Act, that the final actual cost of construction of the Vessel is as follows:

Construction Costs	$70,180,428
Net Interest	5,372,679
Total Actual Cost	$75,553,107

On this basis fixed the guarantee amount at $60,200,000, which amount does not exceed 87½% of the actual cost of the Vessel.

VIII. Found that on the basis of the repayment of construction-differential subsidy (CDS) the Vessel is eligible for a guarantee in an amount not to exceed 87½% of the actual cost of construction of the Vessel.

IX. Approved the amortization of the proposed additional obligations ($31,355,000) on a twenty year level debt service basis (equal payments of principal and interest).

X. Required Queensway to execute a Management Agreement with Cove and required that said Management Agreement be approved in form and substance by the Secretary.

XI. Required that at or prior to the guarantee closing the Economic Development Administration (EDA) subordinate its preferred position on the BAY RIDGE, presently being constructed at Seatrain, in favor of the Maritime Administration.

XII. Required that Chase Manhattan Bank, N.A., (Chase) agree to subordinate their position on the BAY RIDGE to the Maritime Administration and to EDA up to $40,000,000 even should the Letters of Credit issued by Chase for use with respect to the BAY RIDGE be drawn down.

XIII. Required that Queensway execute a Title XI Reserve Fund and Financial Agreement (Financial Agreement) in the form of our standard Financial Agreement dated December 1, 1974.

XIV. Required that Queensway deposit 100% of its profits into the Reserve Fund until it has accumulated an amount in the Reserve Fund and Seatrain Security Fund equal to 50% of the outstanding principal balance of the First and Second Mortgage.

XV. Required that for purposes of Section 12 (negative covenants) of the Financial Agreement the working capital and net worth requirements be set at $11,027,700 for both.

XVI. Required that at or prior to the guarantee closing, the Shipowner have funds available equal to the difference between the outstanding indebtedness on the Vessel

and the capitalizable cost of the Vessel (approximately $32.7 million).

XVII. Required that at the guarantee closing Queensway have working capital sufficient to supply the Vessel on its initial voyage, obtain the necessary marine insurance, and pay the Title XI guarantee and insurance fees and that an officer of Queensway certify that Queensway has this amount.

XVIII. Required that for purposes of meeting the working capital requirement of Section 12 of the Financial Agreement, 50% of the amounts in the Reserve Fund will be counted towards working capital so long as the 100% deposit of profits requirement is in effect.

XIX. Required that Seatrain establish a Seatrain Security Fund and deposit into this fund from the escrowed equity investment of GECC plus its earnings any amounts in excess of those required to protect GECC.

XX. Determined that Seatrain will not have to make deposits into the Seatrain Security Fund if the amount on deposit in the Security Fund plus the amount in the Reserve Fund equals 50% of the outstanding indebtedness (relating to the First, Second, and Third Mortgages) related to the Vessel.

XXI. Considered the release of the Seatrain Security Fund to Seatrain if any of the following conditions are met:

(A) If Queensway should secure a time charter or contract of affreightment to an acceptable credit risk, as determined by the Secretary, equal to at least ½ of the remaining original term of the bareboat charter wherein (1) the charter hire is sufficient to service the bareboat charter hire and is paid on a hell-and-highwater basis, (2) the operating component of the charter hire is sufficient for all operating expenses, and (3) there is a reasonable profit to Queensway.

(B) If Queensway should secure a time charter or contract of affreightment meeting all the conditions in (A) above except that it was not for ½ of the remaining original term of the bareboat charter, and if this time charter or contract affreightment plus the amount in Queensway's Reserve Fund assured the payout of at least 50% of the outstanding indebtedness of the Vessel at the end of the charter period.

(C) If the Vessel is sold to a buyer possessing acceptable substantial credit as determined by the Secretary.

(D) If Queensway were to merge into a company that has sufficient assets and credit, as determined by the Secretary, to service the bareboat charter hire.

(E) The presence of any other conditions or circumstances as determined by the Secretary which would give the Maritime Administration security in an amount at least equal to any of the four above stated conditions.

XXII. Required Queensway to (1) establish United States citizenship in form and manner prescribed in 46 CFR 355 within 30 days after date of this Commitment or this Commitment may be terminated by the Secretary at his sole discretion; provided, however, if a Commitment to Guarantee Obligation closing is scheduled to occur within said 30 day period, required such parties to establish United States citizenship at least 15 days prior to the Commitment to Guarantee Obligation closing and (2) submit satisfactory evidence of continuing United States citizenship on the date of Commitment to Guarantee Obligation closing, at all Guarantee closings and all Mortgage closings with pro forma evidence of citizenship to be submitted at least 10 days prior to the appropriate Commitment, Guarantee and/or Mortgage closing.

XXIII. Required the Shipowner, Polk, Cove, and GECC to submit satisfactory evidence of continuing United States citizenship at the guarantee closing.

XXIV. Required satisfactory evidence of Vessel insurance at least 10 days prior to the guarantee closing.

XXV. Required that any services performed by or for Queensway by or for an affiliated company be at a fair and reasonable rate or approved by the Secretary as to fairness and reasonableness.

XXVI. Required that at least 5 days prior to the guarantee closing Queensway submit to the Secretary a financial statement certified by an officer of the company indicating all non-Title XI debt then in existence.

XXVII. Fixed the additional investigation fee authorized by Section 1104(f) of the Act at $39,193.75, less the $3,000 amendment fee previously paid, which amount must be paid within 30 days of the date of this action but in any event prior to the guarantee closing.

XXVIII. Required that the guarantee fee under the Second Mortgage and the insurance fee under the First Mortgage be fixed at ¾% until reduced by the Secretary based upon Queensway having secured a charter justifying the reduction.

XXIX. Authorized the Assistant Administrator for Maritime Aids to approve all appropriate documents and to take such other actions as may be necessary to effectuate the purposes of this action.

XXX. Required that all documentation be in form and substance satisfactory to the Secretary.

XXXI. Authorized the execution of this letter to Polk and Queensway which will constitute a Letter Commitment to Guarantee Obligations with respect to the sale of the Vessel and additional Title XI obligations, subject

to the conditions contained herein, and required Polk and Queensway to accept the provisions hereof by signing and returning a copy to the Secretary.

Sincerely,

/s/ James S. Dawson, Jr.
JAMES S. DAWSON, JR.
Secretary

ATTACHMENT 5

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CORRESPONDENCE BRIEF - MEMORANDUM

TO: [X] Assistant Secretary
[ ] Deputy Assistant Secretary

ACTION MEMORANDUM June 13, 1975

Subject: Seatrain Shipbuilding Corporation
Brooklyn Navy Yard, New York
Project No. 01-04-01356

W/C Guaranty-90%
$40,000,000 loan
3,000 jobs:
85% minority

Purpose: Seatrain Shipbuilding Corporation requires an EDA Guaranty of 90% of a five year $40,000,000 working capital loan to be made to Seatrain by Chase Manhattan Bank. Banks will not extend financial assistance unless the loan is secured by a government guaranty.

Existing EDA Loans and Guaranties:

Project No. 01-3-00312: Fixed Asset Loan $5,850,000, approved January 27, 1969. Principal payments were rescheduled to commence July 1, 1975. Secured by a first lien on assets of the shipyard and an assignment of the lease on the yard; guaranty of Seatrain Lines, Inc. Interest paid through December 28, 1974. Delinquent interest as of May 10: $102,275.

Project No. 01-4-00330: Working Capital Guaranty of 90% of $6,000,000 loan by Chase Manhattan Bank approved June 30, 1969, paid down to $4,700,000. Maturity date June 1, 1975. Interest is current.

Project No. 01-4-00909: Working Capital Guaranty of 90% of $12,000,000 five year loan by Continental Illinois Bank, approved May 2, 1972. Guaranteed by Seatrain Lines, Inc. Matures March 15, 1977. Interest paid through November 30, 1974. Delinquent interest as of May 30, 1975: $838,964.39. Current rate: 10½% (140% of prime).

Project No. 01-4-01155: Working Capital Guaranty of 90% of $25,000,000 five year loan, approved April 26, 1973. Guaranteed by Seatrain Lines, Inc. Secured by second lien on the Bay Ridge (Hull 103). Matures April 27, 1978. Interest paid through November 30, 1974. Delinquent interest as of May 30, 1975: $1,744,202.75. Current rate: 10½% (140% of prime).

Surname and Organization (Typed)	Prepared by GSTONER	Cleared by DIRECTOR OBD	Cleared by JHANSEL	Cleared by LEGAL	Cleared by WHENKEL	Cleared by DJCAHILL
Initials and Date	[Illegible] 6/19/75	[Illegible] 6/19	[Illegible] 6/20/5	[Illegible] 6/20/75	[Illegible] 6/19/75	

Background: Seatrain ceased work on two 225,000 dwt tankers (80% and 30% completed) in December 1974 laying off approximately 3,000 workers. This loan will permit work on the two tankers to proceed to completion and will provide re-employment for the unemployed laid-off workers and others in the area and hopefully reduce the loss which MARAD and EDA would sustain if the two tankers are not completed.

The Brooklyn Navy Yard was closed on June 25, 1966, with an estimated loss of 10,000 civilian and military direct and indirect jobs. The area unemployment rate rose from about 4% to over 12%. The loss of jobs in the area surrounding the yard was estimated at 2,500. Under this circumstance, EDA, in August 1966, under

mandate of its Act (Title IV, Section 401(a)(4), Sudden Unemployment Rise) designated the Yard and nearby acres in Brooklyn as eligible for EDA assistance.

A long-term relationship of cooperation and commitment between the Federal government, the City of New York and Seatrain Shipbuilding Corporation was formed to alleviate the adverse impact of the yard-closing on this economically depressed area. Since its inception, the effort has been an innovative and often unprecedented social and economic experiment. Seatrain was to be the principal employer and the key element for the success of the long-term conversion plan.

Seatrain had many difficulties to overcome in equipping the old Navy Yard, training workers and constructing the first two tankers. Expense of converting the yard to the most modern in this country, including steel fabricating ability, originally estimated to cost $10-$14 million has amounted to $42 million. Substantial overruns were incurred on the two tankers already sold. Since the sale of these two vessels for $135 million, the oil embargo, foreign producer oil price increases and reduced oil usage caused a collapse in the tanker charter market. A further depressant was the termination of cargo preference for U.S. flag tankers operating in the foreign trade.

By December 1974, it became evident to Seatrain Shipbuilding, that under the present conditions, it could not reasonably expect to either sell or charter the two tankers then under construction, Hull 102 (about 80% completed) and Hull 103 (about 30% completed). Seatrain Lines, Inc., the parent Corporation of Seatrain Shipbuilding, due to its own depressed ship charter and container business and financial problems, was not in any position to furnish the needed working capital to meet increasing material and labor costs required to complete the tankers.

When work was suspended MARAD had already invested in the two tankers the following amounts:

	Subsidy	Title XI (Guaranteed Loans)
Hull 102	$22.1 Million	$20. Million
Hull 103	$ 9.4 Million	$ 3.5 Million

Both the MARAD investment (approximately $55 million) and the EDA investment (over $40 million) were in jeopardy if nothing was done to complete the ships. It was determined by the Department of Commerce that MARAD was not in a position, either under Section 207 authority of its Act or otherwise, to provide all of the required financing over and above the remaining subsidy and Title XI construction financing (aggregating approximately $65.5 million) which would be made available if construction of the two tankers is carried out.

Under these circumstances, the Secretary of Commerce, MARAD and EDA concluded that the continuing interest of the Government would be served if EDA guaranteed 90% of a $40,000,000 working capital loan to Seatrain.

The contemplated guarantee would provide a basis for MARAD to potentially recover its investment in the two tankers and at least extend for several years EDA's potential liability on the existing guaranteed loans. During the term of the EDA guarantee the tanker market may improve and permit sale of the two tankers at reasonable prices and other productive use may be developed for the shipyard, either of which would be favorable for repayment of existing government exposure. Other business for the yard is being actively pursued. In fact, Seatrain has obtained a $20 million contract for the construction of eight ocean-going barges, scheduled to be delivered one a month, beginning in December. The contract is subject to obtaining MARAD guaranteed mort-

gage financing for the barges. Other contracts are being negotiated.

The foregoing plan of action will hopefully result in the following additional benefits:

- Restore upwards of 3,000 primarily minority group jobs.
- Improve the depressed economic conditions of the community.
- Complete the construction of two partially completed ships rather than consign them to scrap.
- Potentially enhance the Government's likelihood of recovering its substantial previous investment.
- By re-opening the yard provide the possibility and the time necessary to convert the Yard to a profitable, viable, multi-purpose manufacturing facility which may provide for a more than temporary alleviation of unemployment.
- Strengthen the financial viability of Seatrain Lines, Inc. through debt restructure so that it will be in a position to repay the existing EDA loan and EDA guaranteed loans and permit Seatrain to continue lease payments on the Yard to New York City of approximately $1,700,000 per annum.
- Increase the possibility of recovery of the Government's existing investment in the two tankers and in the Shipyard by postponing decision as to disposition of the tankers to a future date at which time the foreign or domestic tanker market may have improved.

The basis of the Department of Commerce-MARAD-EDA decision, as outlined by MARAD is based on the imputed value ascribed to the two vessels.

MARAD believes that the two tankers could be employed in the domestic trade to carry oil from Alaska to the states. Recently, Sohio contracted with Avondale Shipyard for the construction of six 165,000 deadweight ton tankers for the Alaska trade. The estimated capitalized value of these vessels is $84 million per ship. If the Seatrain 225,000 dwt tankers were operated in the same manner as the Sohio vessels, i.e., loading only about 163,000 tons per voyage, the actual cost of transportation from Valdez, Alaska to Los Angeles, California, would be $.02 per ton less than the cost of transportation by the Sohio ships.

The Seatrain vessels would, according to MARAD, provide considerably more flexibility in this trade than the Sohio vessels. In the Valdez to Puget Sound trade, the Seatrain vessels could load 193,000 tons of crude oil due to the deeper water at the discharge terminals, and on this basis the transportation cost would be $.33 per ton lower than for the Sohio vessels. Another possibility is the employment of the Seatrain vessels carrying full loads of some 223,000 tons from Valdez to Los Angeles and lightening the ships before coming into port by transferring about 60,000 tons to a smaller tanker. MARAD found that the transportation cost, including lightering [sic] would be significantly lower than the cost of transportation by the vessels contracted by Sohio.

The EDA loan guarantee would provide maximum flexibility in that the decision as to the ultimate employment of the vessels could be deferred until after the vessels are completed. If the foreign trade conditions improve or some specific program is implemented to give relief to U.S.-flag tankers in the foreign trade, the value of the vessels in this trade may be adequate to repay the additional EDA guaranteed loans and also support the Title XI guaranteed loans. On the other hand, if either of these conditions do not materialize, there is the added option

at that time of repaying the CDS, selling the vessels for use in the Alaska trade, and repaying the proposed EDA guaranteed loan from the proceeds of such sale.

The EDA guarantee of $40,000,000 will permit Seatrain to renegotiate its current bank loan as set forth under "Terms and Conditions", providing lower interest rates and extension of maturities to give Seatrain Lines, Inc. more time to rebuild its cash flow.

Approximately $9,000,000 of Chase-Seatrain Letters of Credit will become available for completion of the Bay Ridge.

In addition, there are collateral benefits such as elimination of New York State unemployment payments and increased State and Federal income tax collections and social security withholdings.

Repayment Analysis: Since the proposed loan will be secured by a first lien on the Bay Ridge, a sales price equal to the sales price of the Sohio Tankers of $84 million per vessel for employment in the Alaska oil trade, there would be ample funds to repay the construction-differential subsidy and the new EDA guaranteed loan and also to either repay the Title XI guaranteed financing or have the purchaser assume this indebtedness. The first two tankers were sold for approximately $68 million each. There is no assurance that the tankers can be sold at either of the above figures.

As detailed hereinbefore the market for the two tankers will depend upon tanker charter demand at or subsequent to their completion. Assuming that the market will improve or that governmental aid in the form of subsidy or cargo preference or other incentive is provided for the presently distressed tanker industry, the amount of the loan could be repaid from proceeds of the first lien. Any balance could be liquidated from other sources of production and income of the shipyard.

As indicated hereinbefore Seatrain is pursuing contracts for smaller types of craft and ship work and has obtained a tentative $20 million contract for barges. MARAD believes that there is substantial business for Seatrain in this field, which should generate additional working capital and will probably also extend the completion date for the Bay Ridge to a date when a more favorable tanker market may exist. This proposed revamping of the productive output of the shipyard into various categories of marine construction, if accomplished, will provide more than a temporary alleviation of unemployment.

Since the proposed loan will run for five years, there is also the possibility of Seatrain Lines, Inc. returning to more profitable operations with repayment potential for the existing extended Continental and Chase loans from earnings. The shipbuilding operation has been a heavy financial burden to the Company. In the last year Seatrain has disposed of some of its non-profitable operations. In eight months ending February 28, 1975, Seatrain had net income of $4.3 million compared to a 1974 loss of $3.1 million. Its consolidated net worth has declined from $59 million at December 31, 1972 to near $30 million currently. The cost overruns on tanker construction contributed to this decline.

Based on the reasonable assumption that some combination of the factors discussed hereinbefore will materialize and supported by a first lien on a tanker with an imputed value sufficient to cover the $40 million loan, the Acting Deputy Assistant Secretary for Operations concludes that there is reasonable assurance of repayment of $40,000,000 (the amount of the loan) which EDA has been requested to guarantee. For reasons of loan policy between Chase and Continental Illinois, the $40,000,000 recovery will be divided between the two banks.

All statutory requirements relating to this project have been met. Other findings and the terms and conditions of the loan and guaranty are set forth on the following pages hereof.

Recommendation: It is recommended that EDA offer Chase Manhattan Bank, N. A. a 90% guaranty of a $40,000,000 working capital loan to be made by it to Seatrain Shipbuilding Corporation according to the terms and conditions of the accompanying Guaranty Agreement.

In order to facilitate loan closing, it is recommended that the Acting Deputy Assistant Secretary for Operations be authorized:

1. To execute the EDA guaranty agreement substantially in the form attached for the $40,000,000 Chase loan.
2. To execute extension agreements for the existing Continental and Chase working capital loans and extend the EDA guarantees to cover the deferment of loan maturities.
3. To approve the form and substance of the collateral documents and other loan agreements, drafts of which are included as Exhibits and containing substantially the arrangements set forth under "Terms and Conditions" on the following pages of this Action Memorandum; and to execute such documents and agreements on behalf of EDA.
4. To approve and execute an agreement (draft attached) between MARAD, Chase Manhattan, Continental Illinois Bank and Seatrain providing that EDA will have a first security interest in the Bay Ridge for $40,000,000 during construction and a first preferred ship mortgage in that amount after completion, with proceeds of sale to be applied to the EDA guaranteed Continental and Chase loans. The se-

curity interest will be filed as soon as possible but not necessarily before execution by EDA of its guaranty.

APPROVED [Illegible]

DISAPPROVED ——————

DATE June 20, 1975

ADDENDUM TO SEATRAIN SHIPBUILDING CORPORATION 506

Project No. 01-04-01356

June 13, 1975

Terms and Conditions

1. The proposed $40,000,000 loan will mature in five years with interest payable monthly at a rate of 125% of prime.
2. Concurrently with, or prior to, disbursement of the loan, delinquent interest on all EDA and EDA-guaranteed loans shall be paid.
3. The principal payments to become due on the EDA $5,850,000 loan from July 6, 1975, through June 6, 1977, shall be extended to maturity. Principal payments in the monthly amount presently required shall commence July 6, 1977.
4. The Chase Bank working capital loan of $4,700,000 will be extended for five years until June 15, 1980. Interest rate: prime plus 2½%.
5. The $12 million Continental Bank loan will be extended to March 15, 1982. Interest rate: 125% of prime. The $25 million Continental Bank loan will be extended until April 27, 1983. Interest rate: 125% of prime per annum.
6. EDA guarantees on the three existing Continental and Chase working capital loans shall be extended to cover the delayed maturities and new terms of repayment of these loans.
7. The existing Chase loan to Seatrain Lines of approximately $63,000,000 will be changed to a term loan for six years, with no principal payments for

two years. Principal payments will commence July 31, 1977.

8. *Collateral*:

   a. MARAD will permit EDA to have a first security interest during construction and a first preferred ship mortgage upon delivery on the Bay Ridge to secure its exposure on the $40 million Chase loan and the Continental $37 million EDA-guaranteed working capital loans. MARAD will be in second lien position. Continental Illinois Bank will release its existing second lien on the Bay Ridge. Upon sale of the Bay Ridge and payment of the $40,000,000 first lien, the resulting funds will be applied as follows:

      (i) $12,500,000 to Continental Illinois for application on the $25 million loan. (Less any amounts theretofore paid to Continental on its loans).

      (ii) $13,513,000 to Chase for application on the $40,000,000 Chase loan.

      (iii) Any balance will be applied to those loans, 37/77ths to Continental and 40/77ths to Chase, both percentages based on the Chase $40 million loan and Continental's $37 million loans.

   b. Guaranty of Seatrain Lines, Inc. of the $40,000,000 Chase loan.

9. Any prepayments of principal to either Chase or Continental on the EDA-guaranteed loans are to be divided between the two Banks in proportion to the amount of their respective loans.

10. MARAD will agree to cancellation by Chase of its outstanding letter of credit of $4,411,025 issued to provide operating funds for the Williamsburgh (Hull 101), now sold.
11. Continental Illinois will release its second lien on the Bay Ridge which secured the $25,000,000 Continental Bank-EDA guaranteed loan. Instead, Continental will share in proceeds of EDA's $40 million first lien on Bay Ridge as provided in Condition 8 hereof. It will retain a second lien on the machinery and equipment of the Shipyard.
12. The two letters of credit issued by Chase Bank for operation of the Stuyvesant ($4,411,256) and the Bay Ridge ($4,947,000) shall be modified so that these funds (aggregating $9,358,256) can be used for completion of the Bay Ridge to the extent needed (as determined by MARAD) after the funds made available from the proceeds of the $40,000,000 loan have been used unless the letters are needed for working capital for the Stuyvesant in the event it is not sold when completed. To secure these letters of credit Chase will be granted by MARAD some form of subordinate lien on the Stuyvesant and/or Bay Ridge. To the extent funds become available from this lien position, they will be used to reimburse Chase for funds expended on such letters of credit. If additional funds are available from such lien position, they may be used for loan payments to Chase and Continental and to that extent, the EDA first lien on the Bay Ridge will be reduced.

Other Findings

° The project is located within the Brooklyn Navy Yard which was designated August 19, 1966, and remains designated. The OEDP was updated March 31, 1975, and is current.

° The Office of Civil Rights of EDA has approved this project.

° Chase Manhattan will make the loan only on the basis of a 90% guaranty by EDA. Other private and/or Federal financing is unavailable.

° The proceeds of the loan will be used solely to provide working capital for project operations and will not be used for any physical expansion of Seatrain facilities or capacity.

° The project will not have a significant impact upon the quality of the human environment.

° The Guaranty Agreement requires that the project be insured in accordance with the provisions of the Flood Disaster Protection Act of 1973.

° Name checks revealed no derogatory information.

° Extension of financial assistance in this project will not violate Section 702 of the Act because it will not increase production or services heretofore available in the area.

° No information in material conflict with that presented herein is contained in the file.

Management: According to MARAD, the shipyard is one of the most modern in the country and is well managed from a technical as well as administrative viewpoint. In view of the above, OBD has concluded that this project will be efficiently administered, operated and maintained, as required by Section 604 of the Act.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 77-1645

SHELL OIL COMPANY,
Plaintiff,

v.

JUANITA M. KREPS, ET AL.,
Defendants.

C.A. No. 77-1647

ALASKA BULK CARRIERS, INC., and
TRINIDAD CORPORATION,
Plaintiffs,

v.

JUANITA M. KREPS, ET AL.,
Defendants.

ORDER

Upon consideration of the cross-motions for summary judgment, the respective points and authorities in support thereof and in opposition thereto, the arguments of counsel in open Court, and the entire record herein, and in accordance with the Memorandum Opinion of the Court issued of even date herewith, it is, by the Court, this 22nd day of November, 1977,

ORDERED, ADJUDGED, AND DECREED, that, for the reasons articulated on pages 23-26 of the Court's Memorandum Opinion of even date herewith, and because the Secretary failed to consider the competitive effects of her decisions, the decisions of the Secretary of Commerce to accept CDS repayment by means of a 20-year promissory note and to waive permanently domestic trading restrictions on the S.S. STUYVESANT in

exchange therefor be, and the same hereby are, declared to be arbitrary and capricious and an abuse of discretion in violation of 5 U.S.C. § 706(2)(A); and it is

FURTHER ORDERED, ADJUDGED AND DECREED, that plaintiffs' motions for summary judgment be, and the same hereby are, granted insofar as they seek the declaratory relief ordered in the preceding paragraph; and it is

FURTHER ORDERED, that defendants' and defendant-intervenors' motions for summary judgment be, and the same hereby are, denied insofar as they seek judgment on plaintiffs' claim that the operative decisions with respect to the STUYVESANT were made without notice in 1975 and kept secret until 1977, and this claim will therefore remain before the Court; and it is

FURTHER ORDERED, that defendants' and defendant-intervenors' motions for summary judgment be, and the same hereby are, granted with respect to all of plaintiffs' claims not covered by the preceding ordered paragraphs; and it is

FURTHER ORDERED, that this case is hereby remanded to the Secretary for reconsideration, in accordance with the Memorandum Opinion issued of even date herewith, of her decisions with respect to the STUYVESANT; and it is

FURTHER ORDERED, that the Secretary shall complete the aforesaid reconsideration within 45 days of the date hereof; and it is

FURTHER ORDERED, that counsel for all parties shall be present in Courtroom 11 on November 30, 1977 at 9:30 A.M., for a status call in the above-captioned matter.

/s/ Charles R. Richey
CHARLES R. RICHEY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-1645

SHELL OIL COMPANY,
Plaintiff,
v.

JUANITA M. KREPS, ET AL.,
Defendants.

Civil Action No. 77-1647

ALASKA BULK CARRIERS, INC., and
TRINIDAD CORPORATION,
Plaintiffs,
v.

JUANITA M. KREPS, ET AL.,
Defendants.

ORDER

Upon consideration of the motion of plaintiffs Alaska Bulk Carriers, Inc. and Trinidad Corporation to amend this Court's Order of November 22, 1977, which plaintiff Shell Oil Company joined in today at the status call held herein, and it appearing to the Court that all plaintiffs seek leave to dismiss from this case the claim remaining before the Court that the Secretary's decisions with respect to the STUYVESANT were arbitrary, capricious, and an abuse of discretion because the operative decisions were made in 1975 and kept secret until 1977, and it appearing to the Court that this remaining claim is superfluous and would afford plaintiffs no greater relief than the remand which has already been ordered by this Court, and it further appearing that no further is-

sues remain before the Court and that there is no need for any further proceedings in this case at this time, and it further appearing that there is no reason to delay the entry of final judgment herein, it is, by the Court, this 30th day of November, 1977,

ORDERED, that plaintiffs' motion to amend this Court's Order of November 22, 1977, be, and the same hereby is, granted; and it is

FURTHER ORDERED, that plaintiffs' remaining claim be, and the same hereby is, dismissed; and it is

FURTHER ORDERED, that final judgment be, and the same hereby is, entered with respect to all claims decided by the Court in its Order and Memorandum Opinion of November 22, 1977.

/s/ Charles R. Richey
CHARLES R. RICHEY
United States District Judge

C.A. No. 77-1647

[Caption Omitted in Printing]

NOTICE OF APPEAL

Notice is hereby given that Alaska Bulk Carriers, Inc. and Trinidad Corporation hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on the 30th day of November, 1977.

Respectfully submitted,

AMY LOESERMAN KLEIN
Galland, Kharasch, Calkins & Short
1054 Thirty-First Street, N.W.
Washington, D.C. 20007
(202) 333-2200

[Certificate of Service Omitted in Printing]

Civil Action No. 77-1645

[Caption Omitted in Printing]

NOTICE OF APPEAL

Notice is hearby given that Shell Oil Company, plaintiff named above, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on the 30th day of November, 1977.

/s/ Stephen N. Shulman
STEPHEN N. SHULMAN

CADWALADER, WICKERSHAM & TAFT
11 Dupont Circle, Suite 450
Washington, DC 20036
(202) 387-8100

Counsel for Plaintiff

[Certificate of Service Omitted in Printing]

No. 77-1645

[Caption Omitted in Printing]

NOTICE OF APPEAL

Notice is hereby given that the defendant-intervenors Polk Tanker Corporation and Seatrain Shipbuilding Corporation hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on the 30th day of November, 1977.

Respectfully submitted,

WILLIAMS & CONNOLLY

By /s/ John W. Vardaman, Jr.
JOHN W. VARDAMAN, JR.

By /s/ William E. McDaniels
WILLIAM E. MCDANIELS
1000 Hill Building
Washington, D.C. 20006
(202) 331-5000

COLES & GOERTNER

By /s/ Neal Michael Mayer
NEAL MICHAEL MAYER
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-5460

PRESTON, THORGRIMSON, ELLIS, HOLMAN & FLETCHER

By /s/ Jonathan Blank
JONATHAN BLANK
1776 F Street, N.W.
Washington, D.C. 20006
(202) 331-1005

No. 77-1647

[Caption Omitted in Printing]

NOTICE OF APPEAL

Notice is hereby given that the defendant-intervenors Polk Tanker Corporation and Seatrain Shipbuilding Corporation hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on the 30th day of November, 1977.

Respectfully submitted,

WILLIAMS & CONNOLLY

By /s/ John W. Vardaman, Jr.
JOHN W. VARDAMAN, JR.

By /s/ William E. McDaniels
WILLIAM E. MCDANIELS
1000 Hill Building
Washington, D.C. 20006
(202) 331-5000

COLES & GOERTNER

By /s/ Neal Michael Mayer
NEAL MICHAEL MAYER
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-5460

PRESTON, THORGRIMSON, ELLIS, HOLMAN & FLETCHER

By /s/ Jonathan Blank
JONATHAN BLANK
1776 F Street, N.W.
Washington, D.C. 20006
(202) 331-1005

January 30, 1978

[Certificate of Service Omitted in Printing]

(SERVED)
(January 6, 1978)

(MARITIME SUBSIDY BOARD)

(MARITIME ADMINISTRATION)

U.S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
MARITIME SUBSIDY BOARD

Docket No. A-124

T.T. STUYVESANT—Repayment of CDS

Operation in Jones Act Trade

In the matter of remand for reconsideration as ordered by the United States District Court for the District of Columbia on November 22, 1977, in *Shell Oil Company* v. *Kreps* and *Alaska Bulk Carriers, Inc. and Trinidad Corporation* v. *Kreps*, Dockets CA Nos. 77-1645 and 77-1647.

FINAL OPINION AND ORDER
ON
REMAND FOR RECONSIDERATION

Robert J. Blackwell, Chairman and Assistant Secretary of Commerce for Maritime Affairs, and Samuel B. Nemirow, Member

SERVED UPON:

AFL-CIO Maritime Committee by Carl C. Davis, Esquire, Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006

Alaska Bulk Carriers by E. P. Eisenbiegler, President, P.O. Box 280, Claymont, Delaware 19703

American Petrofina, Incorporated by R. C. Low, Vice President, P.O. Box 2159, Dallas, Texas 75221

The American Waterways Operators, Inc. by Harold D. Muth, Vice President—Government Relations, 1600 Wilson Blvd., Arlington, Virginia 22209

Apex Marine Corporation by Leo V. Berger, President, 410 Lakeville Road, Lake Success, New York 11040

Crowley Maritime Corporation by Thomas B. Crowley, Chairman of the Board and President, One Market Plaza, San Francisco, California 94105

Interstate and Ocean Transport Company by Adrian S. Hooper, President, Three Parkway, Philadelphia, Pennsylvania 19102

Matson Navigation Company by David F. Anderson, Esquire and Peter P. Wilson, Esquire, P.O. Box 3933, San Francisco, California 94119

Polk Tanker Corporation and Seatrain Shipbuilding Corporation, by John W. Vardaman, Jr., Esquire, William E. McDaniels, Jr., Esquire, and Jane E. Genster, Esquire, Williams & Connolly, 1000 Hill Building, Washington, D.C. 20006

by Neal Michael Mayer, Esquire, Coles & Goertner, 1000 Connecticut Avenue, N.S. [sic], Washington, D.C. 20006

by Jonathan Blank, Esquire, Preston, Thorgrimson, Ellis, Holman & Fletcher, 1775 F Street, N.W., Washington, D.C. 20006

Shell Oil Company by Stephen N. Shulman, Esquire, Alan M. Winterhalter, Esquire, Mark C. Ellenberg, Esquire, and Walter W. Bardenwerper, Esquire, Cadwalader, Wickersham & Taft, Eleven Dupont Circle, Washington, D.C. 20036

I. INTRODUCTION

This is the final decision of the Maritime Subsidy Board (Board) and the Assistant Secretary of Commerce for Maritime Affairs (MarAd) in response to the Memorandum Opinion issued November 22, 1977, by the United States District Court for the District of Columbia in *Shell Oil Company* v. *Kreps* (CA 77-1645) and *Alaska Bulk Carriers, Inc. and Trinidad Corporation* v. *Kreps* (CA 77-1647). The District Court, while upholding certain challenged actions of MarAd/Board, held that the Secretary [1] failed to give full consideration to:

> "(1) the effect upon competition of permitting the STUYVESANT to engage in the Alaskan oil trade, and (2) the effect upon competition of permitting Polk to repay the STUYVESANT's CDS [construction-differential subsidy] with a 20-year promissory note rather than requiring immediate payment in full and/or requiring payment of an interest assessment for the period since the CDS had been paid to Seatrain Shipbuilding." [2]

The Court held the MarAd/Board's actions were therefore arbitrary, capricious, and an abuse of discretion; remanded the case to the Secretary for reconsideration of the competitive effect of these actions; and required that a final decision be completed within 45 days.

By notice in the Federal Register on December 8, 1977 (42 FR 62025), MarAd/Board invited comments

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[1] The Secretary of Commerce by Department Organization Order 10-8 has delegated various functions under the Merchant Marine Act, 1936, as amended (Act), to the Board and MarAd. Generally, the Board has exclusive authority with respect to making, amending and terminating construction-differential subsidy contracts under Title V of the Act, and MarAd has exclusive authority with respect to administering such contracts and with regard to vessel financing guarantees under Title XI of the Act.

[2] Memorandum Opinion and Order 23-24.

on the competitive impact issues which the Court directed the Secretary to consider.[3] Ten submissions in response to that Notice were received and have been given careful consideration. It is concluded that the competitive effect on domestic waterborne transportation of Alaskan oil from allowing the STUYVESANT to compete for such oil carriage and permitting repayment of CDS with a promissory note without interest from date of execution of the construction contract is none or minimal. Therefore, no further consideration of the previous MarAd/Board's STUYVESANT actions is necessary as such actions remain unchanged.

II. BACKGROUND

On June 30, 1972, the Board executed contracts with Seatrain Shipbuilding Corporation (Seatrain) and Polk with respect to construction of a 225,000 deadweight ton (DWT) tanker, subsequently named the STUYVESANT, at a contract price of $62,929,700. Under the relevant contracts the Board agreed to pay CDS funds totalling about $27 million to Seatrain. Polk, the vessel purchaser, agreed to operate the ship in the foreign trade of the United States as required by Section 506 of the Act.[4] MarAd at the same time agreed to insure under Title XI of the Act an amount which had been amortized to $28,845,000 on the delivery date of the vessel.

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[3] The Notice referred to operation in the "Jones Act" trade, which is a reference principally to Section 27 of the Merchant Marine Act, 1920, as amended, 46 U.S.C. § 883 (1970). That provision limits oceanborne transportation in the coastwise trade to U.S. built, documented, and owned vessels. Tanker carriage of Alaskan oil between Alaska and the lower 48 states and Hawaii is coastwise trade.

[4] Section 506 of the Act, 46 U.S.C. § 1151 (1970) also expressly permits limited domestic operation, but only with the pro rata payback of CDS.

Over five years later, before delivery of the STUYVESANT, MarAd/Board acting on application by Polk and for stated reasons,[5] agreed on August 30, 1977, *inter alia*, to allow Polk to repay $27.2 million CDS by means of a 20-year interest-bearing promissory note secured by a third preferred ship mortgage on the vessel and thereby to remove all restrictions on operation of the vessel in domestic trade. Further, MarAd/Board approved various transactions which were consummated on September 9 and 30, 1977. Under the transactions Polk sold the vessel to the United States Trust Company (USTC) as owner-trustee for the equity-owner, General Electric Credit Corporation (GECC). USTC bareboat chartered the vessel to Queensway Tankers, Inc., which in turn time chartered the vessel to Standard Oil of Ohio (SOHIO) for three years to operate in the Alaskan oil trade. Also under the transactions, USTC assumed responsibility for $60.2 million of Title XI Government-insured or guaranteed indebtedness on the STUYVESANT, inclusive of $31.4 million incurred at the closing date through sale of new Title XI guaranteed bonds. The proceeds of these bonds were used chiefly to repay loans

[5] The reasons stated for the actions were:

"For over two years the Maritime Administration has been considering the possibility that at the time of delivery there might be no market for the STUYVESANT other than the movement of Alaskan oil to the lower 48 states. The Economic Development Agency in June 1975 agreed to guarantee additional funding to Seatrain Shipbuilding Corporation to reopen its yard to complete this vessel taking into account the same possibility. In light of the fact that several years of work and negotiation have generated no other opportunities for employment of this vessel, and being persuaded that approval of the proposed CDS repayment and the time charter of the Sohio Petroleum Company will improve the collateral position and present possible default on various obligations insured and guaranteed by the Department of Commerce, and failure to approve the proposal would jeopardize continued operation of the Seatrain Shipbuilding Corporation, the following recommendations are appropriate in this instance. . . ."

of $28 million made by the Economic Development Administration (EDA), another agency of the Department of Commerce, which had loaned $5 million and guaranteed 90 percent of approximately $82 million in additional loans to Seatrain for the purpose of developing and maintaining the shipbuilding facilities of the former Brooklyn Navy Yard where Seatrain's yard is located. USTC also placed $32.6 million in an escrow account for the benefit of the equity-owner, GECC, and the further protection of MarAd.

On November 22, 1977, the District Court acted on complaints filed by Shell Oil Company (Shell), Alaska Bulk Carriers, Inc. (Alaska Bulk) and Trinidad Corporation (Trinidad) challenging the aforesaid actions of the MarAd/Board. The Court found that the Secretary of Commerce had the authority to accept repayment by 20-year promissory note without interest during the construction period. The Court also rejected plaintiffs' complaints that the procedures followed deprived them of due process of law. The Court found that in taking the STUYVESANT actions the Secretary gave

> "serious consideration to the following factors: (1) the lack of viable employment opportunities for the STUYVESANT other than in the Alaska oil trade; (2) the improvement of the Government's collateral position and the prevention of possible defaults on other outstanding obligations; and (3) the continued viability of Seatrain Shipbuilding." [6]

The Court continued that the administrative record failed to reflect that the Secretary had given full consideration to:

> "(1) the effect upon competition of permitting the STUYVESANT to engage in the Alaskan oil trade,

[6] Memorandum Opinion 23-24.

and (2) the effect upon competition of permitting Polk to repay the STUYVESANT's CDS with a 20-year promissory note rather than requiring immediate payment in full and/or requiring payment of an interest assessment for the period since the CDS had been paid to Seatrain Shipbuilding." [7]

Such failure of consideration was found to render the Secretary's decisions with respect to the STUYVESANT arbitrary, capricious and an abuse of discretion. The Court remanded the case to the Secretary to permit consideration of protests of plaintiffs and other interested parties and to give appropriate weight to competitive effect in the ultimate decision with respect to the STUYVESANT. The Court did not stay the effectiveness of the MarAd/Board STUYVESANT actions or in any manner suggest that such actions would not remain in effect if the ultimate decision on competitive effect did not require modification of such original actions.

In response to the MarAd/Board Federal Register Notice of December 6, 1977, submissions were received from the following persons:[8]

1. Polk and Seatrain (referred to hereafter as Seatrain's submission).
2. Shell
3. Alaska Bulk and Trinidad
4. AFL-CIO Maritime Committee
5. American Petrofina, Incorporated (American Petrofina)

[7] *Id.* at 25-26.

[8] The discussion herein of submissions filed by these persons in no manner is a concession that they have standing in this matter. Discussion is merely undertaken solely in response to the District Court Memorandum Opinion and Order.

6. The American Waterways Operators, Inc. (American Waterways)
7. Apex Marine Corporation (Apex)
8. Crowley Maritime Corporation (Crowley)
9. Interstate and Ocean Transport Company (IOT)
10. Matson Navigation Company (Matson)

Based on these submissions, the studies and analyses by the MarAd/Board, and matters of which official notice are taken, the following issues are discussed with respect to the STUYVESANT actions:

1. The effect upon competition of permitting the STUYVESANT to engage in the Alaskan oil trade.
2. The effect on competition of permitting Polk to repay the STUYVESANT CDS with a 20-year promissory note and/or requiring payment of an interest assessment for the period since the CDS had been paid to Seatrain.

In addition, comment is made on certain non-competitive impact issues raised in the submissions.

III. DISCUSSION

In discussing the competitive effect of the STUYVESANT actions, it is not in any manner implied that competitive effect is the sole and/or paramount consideration relevant to the STUYVESANT actions. As the Court found, other relevant factors have already been fully considered but it is necessary in addition to consider the factor of competitive effect.[9]

[9] Since it is herein found that the competitive effect properly considered is nil or minimal it is unnecessary to consider further "the appropriate weight" to be given competitive effect.

A. *Competitive Effect—STUYVESANT in Alaskan Oil Trade*

The following were suggested by several persons submitting comments as adverse competitive effects resulting from permitting the STUYVESANT to operate in the Alaskan oil trade without time limitation:

(i) Displacement of present and contemplated unsubsidized vessels,

(ii) Reduction in domestic charter rates and rates of return,

(iii) Inhibition or prevention of new domestic trade construction [,]

(iv) Inherently unfair competition from mere presence of STUYVESANT,

(v) Loss of jobs, and

(vi) Lack of fair warning to domestic trade operators.

1. *Displacement*

The principal charge of unfair competitive effect from employing the STUYVESANT in the Alaskan oil trade is that based on a supply and demand analysis of the unsubsidized tanker vessels required and available, the STUYVESANT will displace unsubsidized tanker vessels from the Alaskan trade. The persons submitting comments and analyzing this supply and demand data have the following differences in projections of the surplus (+) or shortage (—) in large tankers in the Alaskan trade:

Table—Projection of Surplus/Shortage
In Large Tankers (000 DWT)

Year	Seatrain *	Shell	Alaska Bulk/Trinidad **
1978 2d Quarter		−147.4	−1283
1978 3d Quarter	−494		
1980 1st Quarter	−446	+170.1	+ 36

* Seatrain's estimates are based on its derived conversion factors using MarAd data. Using its own data Seatrain calculates different conversion factors from which it estimates a surplus/shortage of —1135.75 for second quarter 1978 and —889.5 for first quarter 1980.

** Alaska Bulk/Trinidad do not make separate estimates for large and small tankers and their estimates are for all tankers.

There is general agreement on the formula to be followed in the supply-demand analysis. The following factors must be considered in that formula and were directly or indirectly considered by all concerned persons:

(a) Availability of Alaskan oil

(b) West Coast absorption of Alaskan oil

(c) Surplus shipments via Panama

(d) Conversion factor to be used to convert barrels per day to DWT required to transport the oil

(e) Availability of non-subsidized tankers for Alaskan trade

(a) *Availability of Alaskan Oil*

In July 1977 the oil discovered in the north slope of Alaska began flowing through the Trans Alaska Pipeline System (TAPS). During the year a series of difficulties plagued the pipeline, particularly damage to pump station 8. It is expected by all, however, that by March 1978 the damage to pump station 8 will be repaired and the throughput will be increased at that time to 1.2 million barrels per day (b/d), an increase of approximately 500,000 b/d from the December 1977 through-

put. The north slope fields can produce at levels above 1.2 million b/d suggesting further increases in the throughput of TAPS in the future. Shell argues that because the pipeline cannot carry more than 1.2 million b/d without additional construction of pumping facilities and no such construction is presently planned, TAPS cannot be expected to exceed 1.2 million b/d through 1979 or 1980. Nonetheless, Shell, along with Alaska Bulk and Trinidad, follows the 1976 estimates of MarAd[10] that the availability of Alaskan oil (TAPS and South Alaska) will be 1.35 million b/d in April 1978 (1978.2) and 1.5 million b/d by January 1980 (1980.1). Seatrain uses the same estimates but as applicable only to throughput at TAPS.

There is every reason to continue in the assumption that because of the high capital cost of construction of TAPS and north slope development some or all of the private backers will successfully urge as great a rate of throughput as can be economically sustained in order to gain as early as possible a return on their enormous investment. While some additional construction of pumping facilities will be necessary, such construction is not expected to be at prohibitive cost, and no doubt will be planned as soon as present difficulties are corrected. Further, the President has recently stated that as one measure of coping with the deficit in U.S. balance of trade and payments he has instructed the Department of Energy (DOE) to "encourage an expansion of production at Prudhoe Bay above the 1.2 million barrels a day planned for early 1978." [11]

[10] U.S. Department of Commerce, Maritime Administration, The U.S. Flag Tanker Fleet and Domestic Carriage Requirements—An Assessment of Fleet Adequacy, October 21, 1976.

[11] Release by Office of the White House Press Secretary via Department of Treasury, December 21, 1977.

In this light, TAPS deliveries from Prudhoe Bay as of early 1980 (1980.1) are projected for present purposes at 1.35 million b/d. This is not necessarily inconsistent with the Shell contention that TAPS flow cannot be increased above 1.2 million b/d through 1979 or 1980 because Shell recognizes the possibility that by the end of 1979 the throughput at TAPS will be above 1.2 million b/d.

There is no dispute among persons submitting comments that the production in South Alaska at Cook Inlet for the relevant time period will be 150,000 b/d. Therefore, it is found that the best estimate of total availability of Alaskan oil is 1.35 million b/d in 1978.2 or 3 (TAPS 1.2 and South Alaska .15) and 1.5 million b/d in 1980.1 (TAPS 1.35 and South Alaska .15).

(b) *West Coast Absorption*

There is no pipeline connecting the Alaskan oil pipelines to those of the continental United States. Hence, Alaskan oil is pumped principally at Valdez and Cook Inlet into tankers for shipment to the lower 48 states. For a variety of reasons only a limited amount of the Alaskan oil can be absorbed by the U.S. West Coast. There is presently no suitable West Coast Oil pipeline connecting into west to east oil pipelines. There has been considerable discussion about constructing a pipeline from San Pedro, California, to Midland, Texas, to tie in with Texas pipelines which feed throughout the rest of the mid and eastern United States, but no work on such a connecting pipeline has commenced. It would take two years to complete such a project,[12] after necessary Governmental approvals at the local, state and Federal levels.

In 1976 and early 1977 the Federal Energy Administration (FEA) and MarAd estimated that the amount of

[12] *SOHIO WEST COAST TO MID-CONTINENT PIPELINE PROJECT.*

Alaskan oil that would be absorbed by the U.S. West Coast would be 850,000 b/d from 1978.2 through 1980.1. This estimate was based on generalized assumptions. Actual experience since TAPS opened shows less absorption of Alaskan oil than expected [13] and has resulted in revised estimates by the FEA, MarAd and private persons. The amount of the downward adjustment is in dispute.

The FEA indicated in Fall 1977 that only 600,000 to 700,000 b/d of Alaskan oil would be sold in 1978.3 to West Coast refiners. Seatrain indicates that there would be 675,000 b/d absorbed in 1978.3 and 750,000 b/d absorbed in 1980.1. Shell estimates that West Coast absorption will be 850,000 b/d in 1978.2 and 1980.1. Alaska Bulk and Trinidad indicate in their June 1976 study a West Coast absorption in 1978.3 of 600,000 to 700,000 b/d and in 1980.1 of 700,000 to 800,000 b/d.

The MarAd/Board have reviewed the principal factors expected to influence the absorption of Alaskan oil on the U.S. West Coast: the limited present and scheduled capacities of West Coast refineries; [14] the approximately three-year time interval required for refinery modification for high sulfur crude, as recognized by Shell; the relatively high sulfur content and specific gravity of Alaskan crude oil, compared to certain domestic and foreign imported oils, making it less attractive to existing West Coast refineries and requiring them to modify at high cost their facilities to handle large quantities of the oil; the sales price of Alaskan crude oil compared to Californian and foreign produced oils; [15] and the production and import levels of Californian and foreign oils, re-

[13] U.S. Coast Guard arrival and sailing cables from Valdez, Alaska.

[14] FEA, *Equitable Sharing of North Slope Crude Oil*, April 1977.

[15] Petroleum Intelligence Weekly.

spectively.[16] Based on this review, the best current estimates are that in 1978.3 the U.S. West Coast will absorb 675,000 b/d and in 1980.1 only 680,000 b/d. In short, there is no support for an opinion that the West Coast can reasonably be expected to significantly increase its absorption beyond the 1978.3 level for the foreseeable future. Two recent developments provide further support for this conclusion: (i) the December 12, 1977 action of DOE amending its crude oil equalization (entitlement) program to encourage greater use of heavy Californian crude oil with expected displacement of Alaskan crude oil; and, (ii) recent instructions from the President to the DOE, (see footnote 11), to pursue efforts to expand production of oil at Elk Hills Naval Petroleum Reserve and to maintain production of Californian crude at a high level. [17]

(c) *Surplus via Panama*

The Alaskan oil that is not absorbed on the West Coast is expected to be shipped through the Panama Canal to the Gulf and East Coasts. Because it is generally cheaper to the shipper to transport oil by large size tankers and because of the physical limitations of the Panama Canal, there has developed the commercial practice of loading oil into large tankers in Alaska and discharging the oil into small tankers by means of lighterage

[16] FEA, *Equitable Sharing of North Slope Crude Oil*, April 1977.

[17] Shell argues that "in the long run" Alaskan oil will be absorbed to the maximum West Coast refinery limits because it is more profitable to sell such oil to the West Coast than to ship it through the Canal. It claims the present situation is due to SOHIO's committed tanker charters and claims others charge lower prices than SOHIO for Alaskan oil. However, it is understood that Exxon also was heavily committed to tanker charters in the trade, but was able to place excess tonnage through various market mechanisms. Further, Shell's explanation fails to take into account the many factors impacting on West Coast absorption of Alaskan oil and sheds little light on when is "the long run."

off Panama for further shipment through the Panama Canal to the Gulf and East Coasts. Based on the projection of Alaskan oil availability of 1.35 million b/d in 1978.3 and 1.5 million b/d in 1980.1 and West Coast absorptions of 675,000 b/d and 680,000 b/d respectively, it is determined that the expected surplus of Alaskan oil moving via the Panama Canal and onto the Gulf and East Coasts will be 675,000 b/d in 1978. 3 and 820,000 b/d in 1980.1.

(d) *Conversion Factor of B/D to DWT*

It is necessary to convert the demand of Alaskan oil in b/d to DWT since the supply of tankers is measured in DWT. Various assumptions have to be made, including the size and speed of vessels, the number of operating days and port time, and cargo deadweight versus design deadweight. The MarAd 1976 supply-demand analysis contained data which Seatrain uses to derive the following figures to convert b/d to tanker DWT requirements:

Valdez to West Coast	1.84
Valdez to Panama	4.45

Shell, and to a large extent Alaska Bulk and Trinidad, relies on the data underlying these figures.

Actual experience has indicated higher conversion factors. Based on this experience, Seatrain suggests conversion factors of 2.28 to the West Coast and 4.97 to Panama.

It is not found that actual experience under start-up conditions at reduced volumes is sufficient to justify the use of the Seatrain suggested factors. However, it is found from monitoring of the actual voyages in the Alaskan oil trade that there may be a shorter operating year than earlier expected (345 days instead of 350) for voyages from Alaska, slower average speed (15.5 knots

instead of 16 for large tankers and 15 instead of 16 for small tankers), less cargo per DWT (.94 instead of .96),[18] and fewer barrels per ton (7.184 instead of 7.4).[19] With these adjustments, due to better information from actual operation, the adjusted conversion factors are:

Valdez to West Coast	1.99
Valdez to Panama	4.84

(e) *Supply of Tankers*

The supply of unsubsidized domestic tanker tonnage at any given time for the Alaskan oil trade is the sum of the tonnage capacities of "available" tanker vessels in service and built without CDS. Because of the nature of the Alaskan oil trade with large tankers operating from Alaska to off Panama and small tankers operating through the Panama Canal to Gulf and East Coasts, this supply is calculated separately for large and small tankers. Small tankers are those that can transit the Panama Canal fully loaded, which are generally limited to a maximum of between 50,000 and 60,000 DWT.

The STUYVESANT at 225,000 DWT is clearly a large tanker. It is believed that large tankers, especially of the size of the STUYVESANT, in the Alaskan oil trade do not compete with small tankers because of different physical characteristics, operating areas and economies of scale. However, it is recognized that Alaska Bulk and Trinidad maintain that only the independent tanker owners (some with small tankers) are in competition with the STUYVESANT. In view of that contention the supply for large and small tankers has been calculated.

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[18] Prior MarAd estimates did not sufficiently account for bunkering patterns in the cargo per DWT figure.

[19] API gravity of North Slope Oil of 26° - 28°.

The Supply of domestic tankers has been adjusted for domestic coastwise trade and Military Sealift Command charters but not for domestic trade tankers in the Soviet grain and Strategic Petroleum Reserve (SPR) programs which may reduce the available supply for the Alaskan trade. With those adjustments the following supply of domestic unsubsidized tanker vessels (excluding the STUYVESANT) is found "available" to the Alaskan oil trade:[20]

1978.3	Small tankers	1,227,000 DWT
	Large tankers	3,758,000 DWT
	Total	4,985,000 DWT
1980.1	Small tankers	1,227,000 DWT
	Large tankers	4,548,000 DWT
	Total	5,775,000

(f) *Shortage or Surplus of Tankers in Alaskan Oil Trade*

Based on the foregoing, the demand for tanker vessels in the Alaskan oil trade in 1978.3 is derived as follows:

Large Tankers		
675,000 b/d West Coast	x 1.99 =	1,342,000 DWT
675,000 b/d Panama	x 4.84 =	3,267,000 DWT
Total		4,609,000 DWT
Small Tankers		
675,000 b/d Panama	x 1.95 =	1,313,000 DWT
Total		5,922,000 DWT

Based on a supply of 1,227,000 DWT for small tankers and 3,758,000 DWT for large tankers, there results a shortage of 86,000 DWT for small tankers and 851,000 DWT for large tankers. Such a shortage for large

[20] Shell projects a larger supply of small tankers by inclusion of tankers listed in the 1976 MarAd study under "Other Than Alaska Domestic Trade Tanker Fleet." Shell is incorrect as the supply tonnage in the study was accurate even though individual ships listed may have slipped into and out of the Alaskan and non-Alaskan trade.

tankers far exceeds the 225,000 DWT of the STUYVESANT and shows that the STUYVESANT cannot be expected to displace any unsubsidized vessels in its relevant market.

The demand in 1980.1 for tanker vessels in the Alaskan oil trade is derived as follows:

Large Tankers		
680,000 b/d West Coast	x 1.99 =	1,353,000 DWT
820,000 b/d Panama	x 4.84 =	3,968,000 DWT
Total		5,321,000 DWT
Small Tankers		
820,000 b/d Panama	x 1.95 =	1,596,000 DWT
Total		6,917,000 DWT

Based on a supply of 1,227,000 DWT for small tankers and 4,548,000 DWT for large tankers, there results a shortage of 369,000 DWT for small tankers and 773,000 DWT for large tankers. Again, since such shortage far exceeds the 225,000 DWT for the STUYVESANT, such vessel cannot be expected to displace any unsubsidized vessels.

This assessment of supply and demand is based on a number of variables that might change. Shell points out that foreign flag operators may carry substantial quantities of Alaskan oil to the Virgin Islands, but it does not include any allowance for this contingency in its calculations of the supply and demand for Alaskan oil trade. The subject of such foreign flag carriage is presently a matter of litigation.[21] Possible factors which might reduce the supply of unsubsidized vessels for Alaskan oil carriage include the use of tankers in the SPR and Soviet grain programs; some 30 relatively large vessels

[21] The matter is on appeal to the U.S. Court of Appeals for the District of Columbia (Civ. No. 77-1934, -1962, and -1970) from the September 19, 1977 District Court decision in *American Maritime Association* v. *Blumenthal*, Civ. Action 77-1508 (D.D.C. 1977).

transiting the Panama Canal at reduced carge deadweight satisfy any shortage in the supply of small vessels; implementation of more stringent U.S. Coast Guard pollution control regulations concerning segregated ballast on tanker vessels; and the increased production at Elk Hills beyond 150,000 b/d which is a strong possibility in view of the President's instruction to expand such production.[22]

These uncertainties as well as the uncertainty over the timing of construction of new West Coast pipelines make it difficult or impossible to predict the supply and demand of tankers in the Alaska oil trade beyond 1980, when the present time charter of the STUYVESANT expires. The 1976 MarAd study indicated that Alaskan oil production could increase to 1,825,000 b/d in 1982.4 and to 2,150,000 b/d by 1985. While there undoubtedly will be one or more pipelines constructed on the West Coast in the next tewenty years, there also may be additional discoveries in Alaska which would offset the decline in demand for tankers. The owners of the STUYVESANT have not indicated that the vessel is permanently dedicated to the Alaskan oil trade. Even if it were, there is no substantial basis known on which to conclude that there would be any unfair competition through displacement of any unsubsidized vessels that may be in that trade in the future.

2. *Charter Rates and Rates of Return*

Several persons submitting comments argue that the employment of the STUYVESANT would adversely affect charter rates and rates of return in the Alaskan oil trade by unsubsidized operators. The argument is based largely on a perceived surplus of tonnage for the Alaskan trade which the STUYVESANT employment in the trade would worsen. As is found herein, it is expected that

[22] See note 11 *supra*.

there will be a tonnage shortage and not a surplus in the Alaskan oil trade even after including the STUYVESANT.

Shell presses further that *any* new vessel employment in the Alaskan oil trade adversely affects the charter rates of other vessels to some extent. However, it is not established that Shell's theory comports with the charter market which has developed. Equally important, Shell's premise that any additional competition is unfair competition was rejected by the District Court and is not supported by the Act.[23]

Alaska Bulk and Trinidad add that the STUYVESANT charter at $4.50 per DWT per month is a depressed rate from the norm of $8.00 to $9.00 and amounts to unfair competition. The vessels of Alaska Bulk and Trinidad were chartered before the STUYVESANT so their concern is limited to possible rechartering during and after 1980. In a freely functioning market charter rates are less per DWT for larger vessels than small vessels because of economies of scale, all else being equal. The STUYVESANT charter rate fixed on June 21, 1977, was $5.40 per DWT per month (contrary to the assertion of Alaska Bulk and Trinidad). Some smaller vessels of the independent unsubsidized tanker owners in the Alaskan oil trade have been fixed from $8.00 to $9.00 per DWT per month, and some at higher and lower rates. The projected market for transportation of Alaskan oil indicates that because demand will exceed supply shippers will in

[23] The District Court found that "Plaintiffs have no 'legitimate claim of entitlement' to be free from competition," citing cf. *Board of Regents* v. *Roth*, 408 U.S. 564, § 577 (1972). Memorandum Opinion at 19. It further found "that the protection of unsubsidized vessels from the 'unfair' competition of subsidized vessels is one of the cornerstones of the statutory schemes." Memorandum Opinion at 24. The Act does not absolutely bar even CDS vessels from domestic operation.

the usual circumstance have to pay at least a compensatory rate for the needed tonnage. The level of compensatory rate and fair rate of return are matters dependent on a company's operating and financing cost structure, including such factors as age, depreciation and initial capitalized cost of the vessels. Based on the information presented there is nothing to suggest that Alaska Bulk and Trinidad will not be able to recharter their vessels at reasonable levels.[24]

Only one person submitting comments detailed a particular instance of alleged unfair competition from the STUYVESANT charter rate fixture. American Petrofina maintained that on June 29, 1977, it offered the 225,000 DWT BROOKLYN or WILLIAMSBURG (sisterships to the STUYVESANT and built with CDS) to SOHIO for six months at a rate of $7.00 per DWT per month and that the offer was rejected. Even if unsubsidized operators are entitled to a certain level of protection from competition by formerly CDS vessels, operators of CDS vessels are not entitled to such protection,

[24] It should be also noted that on November 20, 1977, MarAd approved the application for Title XI guaranteed financing on the PRINCE WILLIAM SOUND, a 120,000 DWT tanker in the amount of $42,850,000. The PRINCE WILLIAM SOUND is owned by 667 Leasing Company and is bareboat chartered to Alaska Bulk for a term 20 years under a "hell and highwater" charter. The terms of the Title XI financing on the PRINCE WILLIAM SOUND are similar to those of the STUYVESANT. The Title XI guaranteed bonds on the PRINCE WILLIAM SOUND will be amortized on a level debt service basis with a maturity of 20 years from date of delivery of the vessel (the same as the STUYVESANT). In making the statutory funding of economic soundness for the PRINCE WILLIAM SOUND as required by Section 1104 (d) of the Act, MarAd relied in part on submissions from the Title XI applicant that there was a long term need for this vessel in the domestic commerce of the United States. MarAd's own analyses, which took into consideration the impact of the STUYVESANT being operated in the coastwise trade, confirmed that there was a long term need for the PRINCE WILLIAM SOUND in the Jones Act trade and the statutory finding of economic soundness was made on this basis.

at least to the same extent. If CDS operators are to participate in the Alaska trade, they have to compete for charters in the market. Further, since there is a market for transportation of Alaskan oil sufficient for American Petrofina's vessel the presence of the STUYVESANT would have no effect on this market.

3. *New Construction*

American Waterways, Alaska Bulk and Trinidad, among others, contend that the STUYVESANT actions create uncertainty among domestic operators and investors in deciding on orders for new construction and will probably result and has resulted in no more commitments for new unsubsidized ships. They cite neither a particular instance of a decision not to build new ships in the domestic trade nor any plan to build which was scrapped.

There was a significant period before the STUYVESANT actions when there were no new domestic orders placed. The last order for ships to be constructed for operation in the Alaskan oil trade was in 1974. Thereafter, there was a worldwide depression in the tanker market. It is unlikely then that the STUYVESANT actions have any relationship to the lack of new shipbuilding orders for the domestic trade either in the past or in the future. This conclusion is further strengthened by the findings herein that the market could accommodate some additional tonnage.

4. *Inherently Unfair*

Several persons submitting comments, particularly Shell, Alaska Bulk, Trinidad and Crowley, contend that the STUYVESANT actions were "inherently" unfair. They cite no adverse competitive effect but allege unfair competition because without repayment of CDS the STUYVESANT would not be in the trade, without the STUY-

VESANT the domestic trade would be well balanced, and with the STUYVESANT actions, ships could be built on speculation under the CDS programs and switched to the domestic trade. The contentions challenge the authority of the Board to permit full CDS repayment, but that authority has been affirmed by the District Court and is not for discussion herein. The contentions also assume that domestic operators have absolute protection from any additional competition, which the District Court also rejected. Finally, the contentions assume that the domestic trade market could not accommodate the STUYVESANT without significant adverse effect to domestic operators. That assumption has been rejected in the preceding discussion.

5. *Loss of Jobs*

The AFL-CIO Maritime Committee alleges that the impact of the STUYVESANT actions on its "client" would be termination of employment of its members. The reference is apparently addressed to the lack of a charter in the Alaskan oil trade on Shell's two large tankers being constructed. As Seatrain points out, there is no relationship between the STUYVESANT charters and Shell's lack of charters because Shell failed to make its ships available for charter until after the STUYVESANT charter was negotiated and public knowledge and further because Shell was seeking significantly higher rates than market competitive rates for U.S. coastwise qualified vessels. Moreover, the MarAd/Board actions assured that the STUYVESANT would not be in layup and thus generated additional union employment rather than any decrease.

6. *No Fair Warning*

American Waterways complains that the STUYVESANT actions were taken without "fair warning" to domestic operators of the domestic tanker tonnage available.

The "fair warning," if any, afforded domestic operators by law and the actual notice given domestic operators were subjects of litigation in court. The subjects are not for discussion in this decision. Even if there were a lack of fair warning, which is not the situation, the adverse competitive consequence must be encompassed in the preceding discussions of alleged adverse competitive effects.

B. *Competitive Effect—Repayment by Promissory Note*

Those submitting comments adverse to the STUYVESANT actions argue that acceptance of repayment of CDS by a 20-year promissory note rather than immediate cash payment in full gave the STUYVESANT two unfair competitive advantages. The first unfair advantage was a "small loan" not available to domestic operators and the second was a lower charter rate.

1. *Small Loan Advantage*

Alaska Bulk, Trinidad and others contend that permitting Polk to repay CDS by a 20-year promissory note is in reality a loan which bears an interest rate equal to the interest rate borne by other Title XI financing for the STUYVESANT and that such loans are not available to ships in the domestic trade.

Under Title XI of the Act the Secretary is authorized to provide loan guarantees for financing of U.S.-built vessels. If ships are built without the aid of CDS, a domestic trade shipowner may secure financing under Section 1104(b)(2) of the Act not to exceed 87½% of the actual costs of the vessels with Title XI bonds to be repaid within 25 years from date of delivery of the vessels. Under the same provision if vessels are built with the aid of CDS, Title XI financing may not exceed 75% of the actual costs of the vessels.

The STUYVESANT was contracted to be built with the aid of CDS and as such was limited to 75% Title XI financing. The subsequent actions permitting the STUYVESANT to repay CDS by promissory note also made the STUYVESANT eligible for 87½% Title XI financing. Since the entire amount for the CDS repayment would represent actual cost of the STUYVESANT and be eligible for Title XI financing, the combined package (of the 20-year promissory note in the amount of $27.2 million and Title XI financing in the amount of $60.2 million) provides no more long term debt financing than an 87½% Title XI financing in the total amount of $87.4 million for which the STUYVESANT was also eligible. Therefore, there is no competitive advantage in terms of financing.

2. *Charter Rate*

The remaining question is whether the cost of repayment by promissory note gives a significant competitive advantage so as to permit a lower charter rate than obtainable from immediate full repayment. If Polk had been required to make immediate full repayment, it would have in all probability obtained Title XI refinancing of the CDS under Section 1104(a)(3). This section provides for "financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act, as amended . . . ." The two methods can be compared in terms of cash flow differential and converted to a cost per DWT per month for charter rate purposes.

The cash flow differential was properly set forth in an affidavit in court litigation.[25] The interest rate as of the

[25] Affidavit of Edmond J. Fitzgerald, Acting Director, Office of Ship Financing Guarantees, Maritime Administration, dated October 18, 1977.

STUYVESANT closing would have been 8.05% on Title XI guaranteed bonds and the guarantee fee would have been ¾ of 1%. The total rate of Title XI financing on that date would have been 8.80%, resulting in approximately annual payments of principal and interest on the CDS amount on a level debt service basis of $2,914,700 over 20 years. This is compared to the approximately equal payments of principal and interest under the promissory note on the CDS rate of $2,738,300 annually. The difference between the two payments is only $176,400 per year. About $155,655 of the difference would represent the ¾ of 1% guarantee fee. The remaining $20,745 would represent the timing difference of financing at a Title XI bond rate of 7.95% in early September and the rate of 8.05% for Title XI financing that would have been required on September 30, 1977 and is irrelevant to the consideration of competitive advantage.[26]

When the $155,655 difference attributable to the ¾ of 1% guarantee fee is reduced to a monthly charter hire cost, it equates to $.06 per DWT per month for the STUYVESANT. This increased cost of the vessel would affect the charter rate only if the increase was so large that the time charter rate could not generate sufficient funds to support the debt service and operating costs. The time charter rate on the STUYVESANT is $5.40 per DWT per month. The bareboat charter hire on the STUYVESANT is approximately $3.54/DWT/month (in-

[26] The $20,745 differential is irrelevant because in comparing financing by promissory note and Title XI, the same dates for interest rates must be compared. The promissory note runs from the time of ship delivery (September 30, 1977) but the interest rate for the note was set at the time of the second tier Title XI financing on September 9, 1977. It must therefore be assumed that a comparable Title XI financing on the CDS repayment would have been arranged at the same time as the second tier Title XI financing on September 9, 1977 and have received the identical interest rate of 7.95%.

cluding full coverage of debt service) and the operating costs are approximately $1.60/DWT/month. There is accordingly a profit of $0.26/DWT/month which would be lessened by the $.06 increase in vessel cost. The different financing of the CDS repayment therefore would not lead to a different charter rate and would have no competitive impact on the Alaska oil trade. Further, as Seatrain points out, to the extent the leading protestants to the STUYVESANT actions have a better credit rating, they could command a better interest rate in financing a ship comparable to the STUYVESANT which would more than offset the $.06 increase in vessel cost.[27]

C. *Competitive Effect—No Interest During Construction*

Alaska Bulk and Trinidad estimate the lack of a charge to Polk for interest on the CDS repayment for the time period during construction [28] saved Seatrain $5.2 million. Seatrain computes the savings at $6.7 million. Alaska Bulk and others contend that the savings gave Polk a cost advantage not enjoyed by unsubsidized owners in the Alaskan oil trade.

The District Court at least implicitly found that in appropriate instances the Secretary could accept repayment of CDS by promissory note without interest charged

[27] Alaska Bulk and Trinidad contend that Polk by repaying with a promissory note also saved the costs of underwriter's fees of $250,000 by not having to sell Title XI bonds. Even accepting the contention, it would add less than a cent to the $.06 increase in vessel cost due to the guarantee fee and therefore has no practical effect.

[28] For clarification, it is noted that although the Board did not require *retroactive* interest on the CDS repayment, which would have covered the construction period of the STUYVESANT until delivery, the Board did require prospective interest to be paid on the unamortized balance of the 20 year promissory note at an interest rate of 7.95%.

during the construction period.[29] It should be noted that there is no specific requirement of Section 506 of the Act that CDS be repaid with interest when domestic operation is permitted for up to six months each year upon pro-rata repayment. Also, in the past, there has been no interest charged on repayment of interest by subsidized liner carriers operating in domestic service under Section 506. It would be inconsistent then for the Secretary to be required to charge a construction period interest for a total repayment of CDS permitting permanent domestic operations. Furthermore, during Congressional consideration of the original House and Senate versions of the Act there was a provision for payback of CDS with interest because certain sponsors of the bills felt that otherwise the operator in effect was being afforded the benefits of an interest free loan.[30] The interest provisions were dropped without explanation. It is fair to conclude that Congress did not intend that interest be required to be paid on CDS repayments. By contrast, in Section 607 dealing with the Capital Construction Fund there is a specific requirement for payment of interest under certain circumstances dealing with nonqualified withdrawals. Thus, if Congress had intended that CDS must be re-

[29] With respect to the Secretary's authority to accept repayment of CDS by promissory note on any terms including without construction period interest, the Court held: "In view of the Secretary's broad contractual authority which all parties agree extends to appropriate CDS repayment transactions, and the Court's previous conclusion that it would be patently inconsistent with the far-reaching nature of the Act's statutory scheme to interpret the Secretary's authority in an unnecessarily restrictive manner, the Court finds that it would be entirely inappropriate at this stage of the litigation for the Court to accept plaintiff's contention that no form of promissory note can legally be accepted by the Secretary as repayment for CDS." Memorandum Opinion at 17-18.

[30] Original House Bill H.R. 7521; S-2582 as reported May 24, 1935; H.R. 8555 as reported June 19, 1935.

paid with interest, it would have kept an interest clause in the final version of the bill.[31]

The remaining question is whether in this instance, as a matter of sound exercise of discretion, the Secretary should have required repayment with construction period interest so as to mitigate any cost advantage to Polk. In fact, Polk received no cost advantage from the lack of such interest charge because the interest assessment would not have affected the sale price of the vessel or the cost of debt service.

It is calculated that the amount of interest relating to the construction period for the CDS on the STUYVESANT would have amounted to $5,147,758 based on the same formula used in calculating interest for payback of CDS on two LNG vessels under entirely different circumstances.[32] If the Board had required an interest payment on the CDS repayment of the STUYVESANT, the interest assessment would have raised the amount of CDS repayment from $27.2 million to $32.3 million. The additional debt would not have affected the purchase price, for, as Seatrain points out, GECC would have insisted on both the $120 million purchase price and the debt/equity ratio of $87.4 million/$32.6 million in order to assure its advantages from the sale. Further, because the bareboat hire rate is a product of the vessels' sale price and debt/equity ratio, it too would not have been affected

[31] Opinion of the Comptroller General B-155039, 44 Comp. Gen. 180 (1964). *States Steamship Co.—Calls at Hawaii*, 5 SRR 1111, 1135 (SOC 1965).

[32] On August 9, 1977, the Board permitted Wilmington Trust Company to repay CDS on two Eascogas LNG vessels so as to enable them to be free of Section 506 requirements and to operate permanently in the foreign-to-foreign trade. The Board determined that because the United States would not receive the benefit of operation of the vessels in actual U.S. commence that an interest charge was appropriate. The STUYVESANT is expected to operate in U.S. commerce.

by an interest assessment. Therefore, as related to vessel cost, the debt to be serviced and the bareboat charter hire for the STUYVESANT, the result would have been the same with or without the CDS interest assessment.

This effect of the interest assessment is calculated as follows. In the actions approving the sale of the STUYVESANT and CDS repayment, a second tier of Title XI financing was approved at a level of $31.4 million. If the same debt/equity ratio were maintained with a $120 million sale price and interest charged on the CDS repayment, the amount of the second tier of Title XI would have been reduced by the $5.1 million interest on the CDS repayment. Since the interest rate on the CDS note was pegged at the Title XI rate for the second tier of Title XI bonds or 7.95%, the practical effect on the debt service is zero, as shown by the following table:

Table

Effect of Assessing Interest on CDS Funds
($ millions)

	Actual	Assess Interest
Title XI 1st	$ 28.8	$ 28.8
Title XI 2d	31.4	26.3
CDS Note	27.2	32.3
Total Debt	$ 87.4	$ 87.4
Equity	32.6	32.6
	$120.0	$120.0
$/DWT/Mo.	$ 3.54	$ 3.54

Under the existing arrangement the second tier of Title XI financing amounted to $31.4 million, of which $28.6 million was used by Seatrain to repay part of the $40 million EDA guaranteed loan. If MarAd had assessed the interest charge Seatrain would have been out of pocket $5.1 million from the reduced proceeds of the second tier of Title XI and the EDA would have received $23.5 million in payment of its guaranteed loan instead

of $28.6 million. The beneficiaries of the absence of an interest assessment are not the STUYVESANT or its owners or charterers but the shipyard and most directly the Government and the taxpayers. The requirement of a $5.1 million interest assessment would then have no effect on competition in the Alaska oil trade.

D. *Non-Competitive Impact Issues*

Persons submitting comments also "touch upon (i) the precedential effect of the STUYVESANT actions, (ii) the authority of the MarAd/Board to permit full CDS repayment with a promissory note and without construction period interest, and (iii) the proper procedure for deciding the competitive effect of the STUYVESANT actions.

1. *Precedent of STUYVESANT Actions*

Many persons submitting comments express fear or hope that the STUYVESANT actions will be precedent for similar actions in the future. IOT and Apex request guidance as to when others might benefit from the STUYVESANT actions. American Petrofina expresses concern that similar actions will be taken with respect to the sistership BAY RIDGE. Crowley and the AFL-CIO Maritime Committee, among others, fear that such repayment and domestic operations will become common practice in the future. Matson seeks a statement that the Board's decision will be limited to the STUYVESANT and not liner operations.

The STUYVESANT actions were undertaken in view of very special circumstances as recognized by the District Court. The present decision is limited to the STUYVESANT and will not be precedent for approval of full CDS repayment of other vessels for operation in the Alaska oil trade. Proposed regulations are being developed and will soon be published in accordance with the suggestion of the District Court.

2. *Authority for STUYVESANT Actions*

Several adverse comments submitted either explicitly or implicitly challenge the authority of MarAd/Board to take the STUYVESANT actions. For instance, Alaska Bulk and Trinidad argue that the most serious effect of the STUYVESANT actions on ship operators in the Alaskan oil trade is "the breaking of rules."

The present decision is predicated on the authority of the MarAd/Board to permit full repayment of CDS with a 20-year promissory note and without interest as found by the District Court. Any discussion on this authority is neither necessary nor appropriate since it is the subject of appeal before the U.S. Court of Appeals for the District of Columbia.

3. *Proper Procedures*

Shell, joined by certain others, argues that the Administrative Procedure Act (APA),[33] District Court, and the Act require a trial type hearing for resolution of the issue of the competitive effect of the STUYVESANT decisions, and that if such hearing is not required it should be held as a matter of discretion. Alternatively, Shell argues there must be greater opportunity to participate in the decision in order to allow for effective judicial review.

As Shell concedes, there is no statutory requirement for a hearing in the matter of repayment of CDS under Section 506 of the Act. Its argument of analogy to Section 805(a) and other provisions of the Act only demonstrates that Congress expressly required a hearing (whether it

[33] 5 USC § 551 *et seq.* (1970).

be trial type or less formal) when it so intended. Since the 1936 Act requires no hearing, neither does the APA.[34]

While the MarAd/Board could order a hearing in this instance or permit additional procedural process, the time limitations imposed by the Court, which clearly did not require a hearing[35] and the degree to which the matter had been discussed in the course of court litigation, leads to the conclusion that no trial-type hearing or additional procedural process is desirable. The issues have been well framed from the comments received, a record was made, and a prompt decision is being rendered.

IV. CONCLUSION

For the foregoing reasons it is found and concluded with respect to the Memorandum Opinion and Order issued November 22, 1977, by the United States District Court for the District of Columbia in *Shell Oil Company* v. *Kreps*, (CA-77-1645) and *Alaska Bulk Carriers, Inc. and Trinidad Corporation* v. *Kreps* (CA-77-1647) and to the comments received pursuant to Federal Register notice of December 6, 1977, concerning repayment of CDS on the STUYVESANT and its operation in the Jones Act trade:

1. That the effect on competition of permitting the STUYVESANT to engage in the Alaskan oil trade is none or minimal.
2. That the adverse effect on competition of permitting Polk to repay the STUYVESANT's CDS with a 20-year promissory note rather than requiring immediate payment in full is minimal.
3. That the effect on competition of permitting Polk to repay the STUYVESANT's CDS without requiring payment of an interest assessment for the period since the CDS had been paid to Seatrain is none.
4. That no further consideration of the previous MarAd/Board STUYVESANT actions is necessary as such actions remain unchanged.

[34] E.g., *Local 282 Int'l Brotherhood of Teamsters* v. *NLRB*, 339 F.2d 795 (2d Cir. 1964).

[35] The Memorandum Opinion and Order does not specify a hearing and in the Status Conference on November 30, 1977, the Judge refused the request of counsel for Shell that the Court delineate precisely the procedure to be followed in the administrative reconsideration.

SO ORDERED BY THE
ASSISTANT SECRETARY FOR
MARITIME AFFAIRS AND THE
MARITIME SUBSIDY BOARD/
MARITIME ADMINISTRATION

Dated January 6, 1978

/s/ Robert J. Patton, Jr.
ROBERT J. PATTON, JR.
Assistant Secretary
Maritime Subsidy Board
Maritime Administration

[Footnotes 32-35 correctly renumbered in printing.]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1978

[Filed March 22, 1979]

No. 77-2080

ALASKA BULK CARRIERS, INC.
TRINIDAD CORPORATION, APPELLANTS

v.

JUANITA M. KREPS, Secretary of Commerce,
U.S. Department of Commerce, ET AL.

And Consolidated Case Nos. 78-1211, 78-1212 and 78-1281

BEFORE: Bazelon, McGowan, and Wilkey, Circuit Judges

ORDER

Upon consideration of the petitions for rehearing filed by appellees/cross appellants (Seatrain Shipbuilding Corp., et al.) and appellees (federal), it is

ORDERED, by the Court, that the aforesaid petitions for rehearing are denied.

Per Curiam

FOR THE COURT:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Circuit Judge Bazelon would grant the petitions for rehearing.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1978

[Filed March 22, 1979]

No. 77-2080

ALASKA BULK CARRIERS, INC.
TRINIDAD CORPORATION, APPELLANTS

v.

JUANITA M. KREPS, Secretary of Commerce,
U.S. Department of Commerce, ET AL.

And Consolidated Case Nos. 78-1211, 78-1212 and 78-1281

BEFORE: Wright, Chief Judge; Bazelon, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb, and Wilkey, Circuit Judges

ORDER

Upon consideration of the suggestions for rehearing *en banc* filed by appellees/cross appellants (Seatrain Shipbuilding Corp., et al.) and appellees (federal), having been transmitted to the full Court and a majority of the judges of the Court in regular active service not having voted in favor thereof, it is

ORDERED, by the Court, that the aforesaid suggestions for rehearing *en banc* are denied.

Per Curiam

FOR THE COURT:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Circuit Judge Bazelon would grant the suggestions for rehearing *en banc.*

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1978

[Filed April 3, 1979]

No. 77-2080

ALASKA BULK CARRIERS, INC.
TRINIDAD CORPORATION, APPELLANTS

v.

JUANITA M. KREPS, Secretary of Commerce,
U.S. Department of Commerce, ET AL.

And Consolidated Case Nos. 78-1211, 78-1212 and 78-1281

BEFORE: Wright, Chief Judge; Bazelon, McGowan, Tamm, Robinson, MacKinnon, Robb, and Wilkey, Circuit Judges

ORDER

The suggestions for rehearing *en banc*, filed by appellees/cross appellants (Seatrain Shipbuilding Corp., et al.) and appellees (federal), having been transmitted to the full Court and a majority of the judges of the Court in regular active service not having voted in favor thereof, it is

ORDERED, by the Court, that the aforesaid suggestions for rehearing *en banc* are denied.

Per Curiam

FOR THE COURT:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Circuit Judge Bazelon would grant the suggestions for rehearing *en banc*.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1978

[Filed April 19, 1979]

No. 77-2080

ALASKA BULK CARRIERS, INC.
TRINIDAD CORPORATION, APPELLANTS

v.

JUANITA M. KREPS, Secretary of Commerce,
U.S. Department of Commerce, ET AL.

And Consolidated Case Nos. 78-1211, 78-1212 and 78-1281

BEFORE: Bazelon, McGowan, and Wilkey; Circuit Judges

ORDER

Upon consideration of the motions for stay of mandate pending application for writ of certiorari, filed by appellees' (federal) and cross-appellants (Seatrain Shipbuilding Corp. and Polk Tanker Corp.) and of the opposition filed to the above referenced motions, it is

ORDERED, by the Court, that the motions for stay of mandate pending application for writ of certiorari are granted and the Clerk is directed not to issue the mandate in these consolidated cases prior to May 1, 1979.

Per Curiam

FOR THE COURT:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

SUPREME COURT OF THE UNITED STATES

No. 78-1651

SEATRAIN SHIPBUILDING CORPORATION, ET AL.,
Petitioners

v.

SHELL OIL CORPORATION, ET AL.

ORDER ALLOWING CERTIORARI. Filed June 18, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.